

CLEMENCY FOR THE FALN: A FLAWED DECISION?

HEARING BEFORE THE COMMITTEE ON GOVERNMENT REFORM HOUSE OF REPRESENTATIVES

ONE HUNDRED SIXTH CONGRESS

FIRST SESSION

SEPTEMBER 21, 1999

Serial No. 106-44

Printed for the use of the Committee on Government Reform



Available via the World Wide Web: <http://www.house.gov/reform>

U.S. GOVERNMENT PRINTING OFFICE

60-935 CC

WASHINGTON : 2000

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TUESDAY, SEPTEMBER 21, 1999

HOUSE OF REPRESENTATIVES,
COMMITTEE ON GOVERNMENT REFORM,
Washington, DC.

The committee met, pursuant to notice, at 1:16 p.m., in room 2154, Rayburn House Office Building, Hon. Dan Burton (chairman of the committee) presiding.

Present: Representatives Burton, Morella, Horn, Barr, Miller, Hutchinson, Terry, Biggert, Ose, Vitter, Waxman, Towns, Mink, Norton, Cummings, Kucinich, Davis of Illinois, and Tierney.

Staff present: Kevin Binger, staff director; Daniel R. Moll, deputy staff director; James C. Wilson, chief counsel; David Kass, deputy counsel and parliamentarian; Kristi Remington, senior counsel; Mark Corallo, director of communications; Kevin Long, professional staff member; Kim Reed, counsel; Corinne Zaccagnini, systems administrator; Robin Butler, office manager; Carla J. Martin, chief clerk; Lisa Smith-Arafune, deputy chief clerk; Nicole Petrosino, legislative aide; Howard Denis, staff director, Subcommittee on Civil Service; Russell George, staff director/chief counsel, Subcommittee on Civil Service; Phil Schiliro, minority staff director; Phil Barnett, minority chief counsel; Kenneth Ballen, minority chief investigative counsel; David Sadkin and Michael Yang, minority counsels; Ellen Rayner, minority chief clerk; Jean Gosa, minority staff assistant; and Andrew Su, minority research assistant.

Mr. BURTON. The Committee on Government Reform will come to order.

Good afternoon. A quorum being present, the committee will start conducting our business. I ask unanimous consent that all Members' and witnesses' written opening statements be included in the record. Without objection, so ordered.

I ask unanimous consent that all articles, exhibits and extraneous or tabular material referred to be included in the record. Without objection, so ordered.

I also ask unanimous consent that questioning in the matter under consideration proceed under clause 2(j)(2) of House Rule XI and committee rule 14 in which the chairman and ranking minority member allocate time to committee counsel or Members as they deem appropriate for extended questioning, not to exceed 60 minutes divided equally between the majority and minority. Without objection, so ordered.

Today we are going to focus on the President's decision to offer clemency to members of a Puerto Rican terrorist group, the FALN.

Our system is based on checks and balances. The Congress can pass legislation, but the President can veto it. The President is the Commander in Chief, but only Congress can declare war. But there is one area where the President's power is absolute: the power to grant clemency.

There is nothing the Congress can do about it. There is nothing the courts can do about it. Article II, Section 2 of the Constitution states, "He shall have the power to grant reprieves and pardons for offenses against the United States except in cases of impeachment."

Can we have some order, please.

This is an important responsibility. It is a power that the President has to exercise with a great deal of caution. Before the FALN terrorists, President Clinton had received more than 3,000 petitions for clemency and he had only granted 3 of them. Then on August 11th, the President offered clemency to 16 members of the FALN, a terrorist group seeking independence for Puerto Rico. Almost a month later, 14 of the 16 people accepted the President's offer and were released from prison.

This whole issue has ignited a firestorm of controversy. The FALN was involved in 130 bombings, 5 people were killed, 84 were injured. What we want to know is why did the President make this decision? What is the public benefit? Who advised him on this issue? Was the FBI consulted? The Bureau of Prisons? That is why we are holding this hearing today.

First, we are going to examine what the FALN is. One of the arguments for granting clemency is that these 16 people were not directly involved in any acts of violence. Well, I want to briefly review what they were convicted of.

Most of these people were convicted of things like seditious conspiracy and conspiracy to obstruct interstate commerce. Let's take a look at exactly what that means. Eight of these people were arrested together in Chicago. They were caught in a stolen van carrying illegal weapons. They were parked near the home of a wealthy businessman named Henry Crown. It is believed they were going to kidnap him. The only thing that stopped them was their arrest.

They were convicted in Federal court. As they were sentenced they shouted threats to the judge. Here is what they said according to the court transcript: "You are lucky we cannot take you right now. Our people will continue to use righteous violence. Revolutionary justice can be fierce, mark my words. We are going to fight, revolutionary justice will take care of you and everybody else." That is what they said to the judge. Now these are the people who were just granted clemency.

Three other FALN members were planning to break one of their leaders out of Leavenworth Prison. They had two safe houses in Chicago where they had thousands of rounds of ammunition, blasting caps, detonating cord, dynamite and numerous weapons.

They had a schematic diagram of the prison hidden under the floorboards in the kitchen of the house. The only thing that stopped them was their arrest. The FBI has a videotape of two of these people in one of their safe houses actually making a bomb. And I think we ought to show that to everyone who is in attendance here today.

These are two of the members making a bomb. This is an official FBI tape.

[Videotape.]

Mr. BURTON. Who are these people? These are the people who were just granted clemency. Four of the people who were granted clemency were arrested for their involvement in the armed robbery of an armored car in Connecticut. They are part of a splinter group called in Spanish the machete wielders. This group has claimed responsibility for the murder of a San Juan police officer, ambushing a Navy bus and killing two sailors and shooting a United States Army officer in Fort Buchanan in Puerto Rico. These are the people the President offered clemency to and released from prison.

The saddest part is that the Puerto Rican people don't even know what these people are fighting for. I know a little bit about this issue. I have been a strong supporter of self-determination for Puerto Rico. I am an original sponsor of legislation to give them a free and fair plebiscite to decide their fate. I have spoken in Puerto Rico about this issue.

The vast, vast majority of Puerto Ricans don't want independence. In the last plebiscite only 2.5 percent of the people voted for independence, the rest voted for commonwealth or statehood. Congressman Romero-Barceló of Puerto Rico is here today. He and I worked together on this issue. I hope he will tell us a little bit about the level of support for independence in Puerto Rico.

So I hope we won't have a lot of talk today about how these people were convicted of nonviolent crimes. The only reason some of them did not commit murders or bombings is because they were arrested before they got a chance to do it. Many of the murders remain unsolved to this day. We do not know who committed them. It may have been those that the President pardoned.

We need to know what was behind this decision to offer these people clemency. I think the American people deserve to know.

Was the President aware of the extent of their crimes? Did the President seek the opinion of the Justice Department or the FBI? Did he seek advice from other law enforcement groups? What were the arguments for releasing these people?

I sent a subpoena to the White House. I asked for all of the memos that had been prepared for the President as he made this decision. I sent a subpoena to the Justice Department asking them for all the material they sent to the White House on this case. Instead of complying with the subpoena, the President made a sweeping claim of executive privilege. No documents bearing on this decision can be turned over. Nobody who advised him can testify.

Well, the President has a right to do that. There is no disputing that but I think it is very unfortunate what the President is basically saying is that it is his decision and as far as the Congress and the American people are concerned, it is none of their business.

The President has taken members of a terrorist organization who committed very serious crimes and set them free. I think he has a moral obligation to explain to the American people why he did this. I think he has a moral obligation to explain to the American people why putting these people back on the streets is not a danger to them and their families.

Today I watched the President speaking at the United Nations and two of the things that he highlighted were dealing with terrorism severely and also making sure that nuclear proliferation stopped. And I thought it was kind of interesting that while he was talking about how we should deal severely with terrorism around the world, he was offering clemency to 16 terrorists, members of an organization that had bombed 130 sites and killed or maimed 84 people.

If the President made a good decision, then release the documents and the briefing papers and let them reflect that. If he made a good decision let his aides come up and testify. Mr. President, don't hide behind executive privilege. At the very least the President should go before the American people and give them a forceful explanation as to why these people deserve to be released from prison.

Unfortunately, none of that is going to happen today. We are not going to hear from anyone who can explain to us why the President did what he did. We are going to hear from some people who know a little bit about the FALN terrorists.

We are going to hear from two New York City police officers. They were working on the bomb squad on New Year's Eve in 1982. One of the FALN's bombs went off in their faces while they tried to diffuse it. Detective Senft and Detective Pastorella were permanently crippled. They will be introduced by Congressman Vito Fossella and I am glad he will be here in just a little bit. His plane was delayed because of the weather, but he is on his way.

We are also going to hear from Thomas Connor of New York today. Mr. Connor's father was killed by an FALN bomb. It was set off at the historic Fraunces Tavern in New York in 1975. He was 11 years old the day his father died. We also have Diana Berger Ettenson here today. Her husband was sitting at the same table as Thomas Connor's father. She was 6 months pregnant the day that her husband died and her child never saw his father.

I want to thank all of you for being here. I am sorry for the losses that you have suffered. I know a lot of time has passed but time doesn't heal all of these wounds. I was watching TV a couple of weeks ago and I saw Tim Russert interview one of these FALN members who was released from prison, Ricardo Jiménez. I think what upset me the most was that he tried to blame the restaurant owners for the deaths. I am going to read what he said to Tim Russert: "I think all precautions were taken, you know, to make sure that all human life was preserved. The measures were not taken that were necessary by the people who owned the establishments."

He blamed the restaurant. Mr. Russert asked him again and again if he felt remorse for what he had done. He just danced around and around the issue and it became clear to me that these people do not regret what they did. They are defiant. In fact two of the people the President offered clemency refused to accept it. Oscar López is one of them. He decided he would rather sit in prison than renounce violence. In 1986, he masterminded a violent plan to break out of prison. They were going to use fragmentation grenades and C-4 explosives. I want to read to you what he was working to get with his compatriots outside prison to attack the

prison, bomb it, bomb the guard towers, have helicopters firing into the compound killing the guards there. He asked these people on the outside to get fragmentation grenades, smoke grenades, phosphorus grenades, 8 M-16 rifles, 2 silencers, 50 pounds of plastic C-4 explosives, 8 bulletproof vests, 10 blasting caps to use with the plastic explosives and 100 30-shot clips to use with automatic weapons.

He does not sound like a fellow who is going to renounce terrorism, does he? He also said that if the man who was going to sell them this equipment would not give them a fair price, they should murder him. He was convicted and received a new 15-year sentence. Did the President know about this man before he offered to let him out of prison? I want to read to you what his presentencing report said in 1986. This was by the court:

It was López who offered to obtain false identification, weapons and explosives. It was López who sent Jaime Delgado to Dallas to negotiate the purchase of weapons and explosives. It was López, moreover, who gave his approval for Cobb's return visit to Leavenworth and for the murder of Michael Neece. Even behind the bars of a Federal penitentiary, Oscar López continued to lead his Chicago supporters in violent plans.

He ordered a murder from behind bars. Fortunately the FBI prevented it from happening. He was offered clemency along with his compatriots.

What was it about Oscar López that moved the President to offer him clemency? The President had received more than 3,000 petitions for clemency. Was Oscar López the most compelling case out of the 3,000? The President only granted clemency to three people. And yet he offered it to Mr. López. I don't understand that, especially in view of the fact that the President only granted 3 out of 3,000.

I read an article in the New York Times where Mr. Ruff, former counsel to the President, stated that they did not make this decision for political reasons. But nowhere in the article did Mr. Ruff explain why the President did make this decision. If the President is going to do something this unprecedented there has got to be a good reason for it. I do not understand why the President will not level with the American people.

We have three witnesses from the Justice Department here today. I don't know if they are going to say anything or not. I asked Mr. Gallagher from the FBI to testify about their threat assessment of the FALN. I also asked him to testify about the crimes committed by these individuals. He has had an opening statement prepared for over 1 week. I was informed last night that the Attorney General will not allow him to read his opening statement. He cannot read it, he could not submit it. I do not understand that. The President is using executive privilege and he will not let the FBI even tell what their assessment was in an opening statement. Now maybe we can get something when we question them.

I have run out of words to describe my frustrations with the political games played by Janet Reno and this Justice Department. I just do not know what to say anymore, so I guess what I will do is issue a subpoena for the FBI opening statement. I cannot believe it has come to this.

This has important foreign policy ramifications. We have a serious terrorism problem around the world, as well as events like Oklahoma City and the World Trade Center bombings. Think about that, the World Trade Center bombing. Think about that tragedy at Oklahoma City. I watched the President this morning making this speech at the U.N. As I said before, he said we have to deal severely with terrorism around the world. What kind of message does it send to other countries when we let known terrorists out of prison in our own country?

The President has also told the U.N. that we have to do more to fight nuclear proliferation, and I touched on that earlier. It reminded me of a hearing we had here a couple of months ago. A policy expert from the Defense Department named Jonathan Fox drafted a report for the Defense Department at the administration's request, I understand, stating that China was a nuclear arms proliferator. Someone higher up the food chain made him change his opinion 180 degrees and they told him that they would fire him if he didn't do it, this national security assessment the week before Jiang Zemin, the President of China, was going to Washington. If we are going to fight nuclear proliferation, we better start right here at home.

Let me conclude by saying this. Mr. President, do not leave us sitting here reading the tea leaves trying to figure it out. Send us the documents we have asked for. Let your aides come up and testify. If nothing else, go on TV and tell the American people why letting these terrorists out is to their benefit. But do not tell the American people this is none of their business.

I want to again thank all of our witnesses for being here and I am sorry we had to reschedule this from last week but there is nothing we can do about hurricanes. For those of you who are allowed to speak from the various agencies, we look forward to it.

I now yield to my colleague from California, Mr. Waxman.

Mr. WAXMAN. Thank you very much, Mr. Chairman. I want to say to the victims and family members of victims that are here to testify that our sympathy is with you and we understand the ordeal that you have all gone through. This is the third hearing in which these victims and family members of victims will testify. We have already had a hearing on this issue in two separate Senate committees last week and now we are holding a hearing in this committee on the same subject. And this is after the House has already voted to condemn the President's exercise of granting clemency and the Senate has already voted to condemn the President's action of extending clemency. And as I understand looking over the House schedule for this week, we are going to vote on it once more.

This is really quite extraordinary. The President has the unique constitutional prerogative to make this decision, and I could imagine it was a very difficult decision for him to make.

I received a letter from the President, and I want to ask unanimous consent the letter be made part of the record.

Mr. BURTON. Without objection.

[The information referred to follows:]

THE WHITE HOUSE
WASHINGTON

September 21, 1999

The Honorable Henry Waxman
Ranking Minority Member
Committee on Government Reform
House of Representatives
Washington, D.C. 20515

Dear Henry:

As you know, on August 11, 1999, I offered clemency to 16 Puerto Rican nationalists conditioned on these individuals formally seeking it, renouncing violence and abiding by all parole requirements. This letter is in response to requests for information about my decision.

For the last six years, various Members of Congress, religious and civic leaders, as well as others, have urged me to grant clemency to a group of Puerto Rican prisoners, most of whom have been in prison between 16 and 19 years as a result of convictions for offenses arising out of their participation in organizations supporting Puerto Rican independence.

The question of clemency for these prisoners was a very difficult one. I did what I believe equity and fairness dictated. I certainly understand, however, that other people could review the same facts I did and arrive at a different decision.

In making my decision, I did not minimize the serious criminal conduct in which these men and women engaged. I recognize and appreciate that there are victims of PALN-related violence who feel strongly that these individuals, although not directly convicted of crimes involving bodily harm to anyone, should serve the full sentences imposed. Before making my decision, I sought and considered the views of the Department of Justice. Press reports note that certain Federal Bureau of Investigation and Justice Department officials, including the U.S. Attorneys in Chicago and Connecticut, were opposed to clemency. I did not dismiss those concerns as some have implied. Rather, I carefully weighed them in making this difficult decision.

On the other hand, the prisoners were serving extremely lengthy sentences -- in some cases 90 years -- which were out of proportion to their crimes. (In contrast, Jose Solis Jordan, who was prosecuted and convicted in July in Chicago of conspiring to place explosive devices at a Marine recruiting center, received a sentence of 51 months.)

The petitioners received worldwide support on humanitarian grounds from numerous quarters. President Jimmy Carter wrote in 1997 that granting clemency to these men and women "would be a significant humanitarian gesture and would be viewed as such by much of the international community, a concern that was relevant in 1979 and I believe is today" He noted that each individual had "spent many years in prison, and no legitimate deterrent or correctional purpose is served by continuing their incarceration." Finally, in explaining the close similarity between the current clemency petition and the clemency he granted in 1979 to people who had committed serious crimes in the name of Puerto Rico's independence, he said that then, as now, "to the extent that clemency might, under other circumstance, be viewed as evidence of leniency toward terrorists, no such conclusion could be drawn here in light of the length of the sentences served."

President Carter's support was particularly noteworthy because he commuted to time-served the sentences of the Puerto Rican nationalists who were convicted for their 1954 attack on the House of Representatives, which resulted in the wounding of five congressmen. President Carter also commuted to time-served the life sentence of Oscar Collazo, who attempted to assassinate President Truman, an attack that resulted in the death of a White House policeman.

Bishop Tutu and Coretta Scott King also wrote to seek clemency for the petitioners, since they had received "virtual life sentences" and "have spent over a decade in prison, while their children have grown up without them."

In addition, various Members of Congress, a number of religious organizations, labor organizations, human rights groups, and Hispanic civic and community groups supported clemency. The petitioners also received widespread support across the political spectrum within Puerto Rico. We have recently provided Congress more than 14,000 pages of materials that the White House received in connection with this clemency matter, including thousands of letters seeking clemency for the prisoners.

Many of those who supported unconditional clemency for the prisoners argued that they were political prisoners who acted out of sincere political beliefs. I rejected this argument.

No form of violence is ever justified as a means of political expression in a democratic society based on the rule of law. Our society believes, however, that a punishment should fit the crime. Whatever the conduct of other FALN members may have been, these petitioners -- while convicted of serious crimes -- were not convicted of crimes involving the killing or maiming of any individuals. For me, the question, therefore, was whether the prisoners' sentences were unduly severe and whether their continuing incarceration served any meaningful purpose. I considered clemency for each of them on an individual basis.

Nine of the petitioners were convicted in the Northern District of Illinois of seditious conspiracy, armed robbery, and various firearms offenses. They did not appear at trial, refused defense counsel and presented no defense to the charges against them. They also did not assist the probation office in preparing the pre-sentence reports. They received 20-year sentences for the seditious conspiracy and Hobbs Act counts, 10-year sentences for the weapons charges and 5-year sentences for the vehicle charges. The sentences on most or all of these counts were imposed consecutively, rather than concurrently -- which would rarely occur today under the Sentencing Guidelines -- and resulted in sentences ranging from 55 to 90 years. These nine prisoners have served 19 years in prison. I commuted the sentences of eight of these prisoners to between 23 and 26 years thereby making them eligible for parole pursuant to the mandatory release standards applicable to all prisoners. I refused to commute the sentence of Carlos Alberto Torres, who had been indicted by a federal grand jury in 1977 on explosives charges, was identified as the leader of the group, and had made statements that he was involved in a revolution against the United States and that his actions had been legitimate.

One of the petitioners, Oscar Lopez-Rivera, was charged with the other nine petitioners but was not arrested until May 1981. He was convicted of the same offenses and received sentences totaling 55 years. He too did not present a defense at trial or assist the probation officer in preparing the pre-sentencing report. In 1984, he tried to escape and was sentenced to an additional 15 years for that attempt to run consecutive to his earlier sentence. I proposed commuting his original conviction to 29 years but did not commute his sentence for the attempted escape. He declined the commutation offer.

Three of the petitioners were separately convicted in the Northern District of Illinois of seditious conspiracy, interstate transportation of stolen vehicles and weapons offenses. At trial they were represented by standby counsel and participated in parts of the trial, although they did not

participate in the sentencing process. Each was sentenced to 35 years in prison and had served 16 years. I commuted their sentences to 26 years, thereby making them eligible for parole.

The final four petitioners were members of Los Macheteros and were convicted in the District of Connecticut in connection with the 1984 robbery of a Wells Fargo office. Juan Enrique Segarra-Palmer received a sentence of 55 years, Antonio Camacho-Negron received a sentence of 15 years, and Roberto Maldonado-Rivera and Norman Ramirez-Talavera received sentences of 5 years each. The last two have completed their sentences, but I remitted their outstanding fines. Antonio Camacho-Negron was released in 1998 on parole, but was later re-arrested for parole violation. I was informed that he would be eligible for release at any time if he agreed to abide by the parole requirements. In light of his refusal to comply with the conditions of his first release, I refused to commute his sentence, although I did offer to remit his outstanding fines. He rejected this offer. Finally, I commuted the sentence of Juan Enrique Segarra-Palmer so that he would be eligible for parole after serving 19 years in prison, consistent with the time served by the Chicago petitioners.

The timing of my decision was dictated by the fact that my former counsel, Charles Ruff, committed to many of those interested in this issue that he would consult with the Department of Justice and make a recommendation to me before he left the counsel position. Pursuant to this commitment, I received his recommendation in early August. As he recently indicated to the *New York Times*, his recommendation and my decision were based on our view of the merits of the requests -- political considerations played no role in the process.

As you know, last week I asserted executive privilege in the face of Chairman Burton's subpoena seeking memoranda and testimony concerning the decision process. I did so, after receiving the opinion of the Attorney General that such assertion was proper, as the demand clearly intruded on areas reserved to the President under the Constitution.

Grants of clemency generate passionate views. In vesting the pardon power in the President alone, the framers of our Constitution ensured that clemency could be given even in cases that might be unpopular and controversial. The history of our country is full of examples of clemency with which many disagreed, sometimes fervently. When Theodore Roosevelt granted amnesty to Filipino nationals who attempted to overthrow U.S. control of the Philippines, when Harry Truman commuted the death sentence of Oscar Collazo, and when Jimmy Carter commuted the sentence of Collazo and other Puerto Rican nationalists who had

fired upon the House of Representatives, they exercised the power vested them by the Constitution to do what they believed was right, even in the face of great controversy. I have done the same.

I hope this information is helpful in understanding my decision and that you will share it with members of your Committee and others who might find it useful.

Sincerely,

Bill Clinton

Mr. WAXMAN. And I think it is only fair to read the letter in its entirety at this point.

The President said:

As you know on August 11, 1999, I offered clemency to 16 Puerto Rican nationalists, conditioned on these individuals formally seeking it, renouncing violence and abiding by all parole requirements. This letter is in response to requests for information about my decision.

For the last 6 years various Members of Congress, religious and civic leaders as well as others have urged me to grant clemency to a group of Puerto Rican prisoners, most of whom have been in prison between 16 and 19 years as a result of convictions for offenses arising out of their participation in organizations supporting Puerto Rican independence.

The question of clemency for these prisoners was a very difficult one. I did what I believe equity and fairness dictated. I certainly understand, however, that other people could review the same facts I did and arrive at a different decision. In making my decision, I did not minimize the serious criminal conduct in which these men and women engaged. I recognize and appreciate that there are victims of FALN-related violence who feel strongly that these individuals, although not directly convicted of crimes involving bodily harm to anyone, should serve the full sentences imposed.

Before making my decision, I sought and considered the views of the Department of Justice. Press reports note that certain Federal Bureau of Investigation and Justice Department officials, including the U.S. Attorneys in Chicago and Connecticut, were opposed to clemency. I did not dismiss those concerns as some have implied. Rather, I carefully weighed them in making this difficult decision.

On the other hand, the prisoners were serving extremely lengthy sentences—in some cases, 90 years—which were out of proportion to their crimes. (In contrast, Jose Solis Jordan, who was prosecuted and convicted in July in Chicago of conspiring to place explosive devices at a Marine recruiting center received a sentence of 51 months.)

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He noted that each individual had “spent many years in prison and no legitimate deterrent or correctional purpose is served by continuing their incarceration.”

Finally, in explaining the close similarity between the current clemency petition and the clemency he granted in 1979 to people who had committed serious crimes in the name of Puerto Rico’s independence, he said that then, as now, quote, “to the extent that clemency might under other circumstances be viewed as evidence of leniency toward terrorists, no such conclusion could be drawn here in light of the length of the sentences served,” end quote.

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Bishop Tutu and Coretta Scott King all wrote to seek clemency for the petitioners since they had received, quote, “virtual life sentences” and “have spent over a decade in prison while their children have grown up without them,” end quote.

In addition, various Members of Congress, a number of religious organizations, labor organizations, human rights groups and Hispanic civic and community groups supported clemency. The petitioners also received widespread support across the political spectrum within Puerto Rico.

We have recently provided Congress more than 14,000 pages of materials that the White House received in connection with this clemency matter, including thousands of letters seeking clemency for the prisoners. Many of those who supported unconditional clemency for the prisoners argued that they were political prisoners who acted out of sincere political beliefs. I rejected this argument. No form of violence is ever justified as a means of political expression in a democratic society based on the rule of law.

Our society believes, however, that a punishment should fit the crime. Whatever the conduct of other FALN members may have been, these petitioners, while convicted of serious crimes, were not convicted of crimes involving the killing or maiming of any individuals. For me the question, therefore, was whether the prisoners’

sentences were unduly severe and whether their continuing incarceration served any meaningful purpose. I considered clemency for each of them on an individual basis.

Nine of the petitioners were convicted in the Northern District of Illinois of seditious conspiracy, armed robbery and various firearms offenses. They did not appear at trial, refused defense counsel, and presented no defense to the charges against them.

They also did not assist the probation office in preparing the presentence reports. They received 20-year sentences for the seditious conspiracy and Hobbs Act counts, 10-year sentences for the weapons charges, and 5-year sentences for the vehicle charges. The sentences on most or all of these counts were imposed consecutively rather than concurrently, which would rarely occur today under the sentencing guidelines and resulted in sentences ranging from 55 to 90 years.

These nine prisoners have served 19 years in prison. I commuted the sentences of eight of these prisoners to between 23 and 26 years, thereby making them eligible for parole pursuant to the mandatory release standards applicable to all prisoners. I refused to commute the sentence of Carlos Alberto Torres, who had been indicted by a Federal grand jury in 1977 on explosive charges, was identified as the leader of the group, and had made statements that he was involved in a revolution against the United States and that his actions had been legitimate.

One of the petitioners, Oscar López-Rivera, was charged with the other nine petitioners but was not arrested until May 1981. He was convicted of the same offenses and received sentences totaling 55 years. He too did not present a defense at trial or assist the probation officer in preparing the presentencing report.

In 1984 he tried to escape and was sentenced to an additional 15 years for that attempt, to run consecutive to his earlier sentence. I proposed commuting his original conviction to 29 years but did not commute his sentence for the attempted escape. He declined the commutation offer.

Three of the petitioners were separately convicted in the Northern District of Illinois of seditious conspiracy, interstate transportation of stolen vehicles, and weapons offenses. At trial, they were represented by stand-by counsel and participated in parts of the trial, although they did not participate in the sentencing process. Each was sentenced to 35 years in prison, and had served 16 years.

I commuted their sentences to 26 years, making them eligible for parole.

The final four petitioners were members of the Los Macheteros and were convicted in the district of Connecticut in connection with the 1984 robbery of a Wells Fargo office. Juan Enrique Segarra-Palmer received a sentence of 55 years, and Antonio Camacho-Negrón received a sentence of 15 years, and Roberto Maldonado-Rivera and Norman Ramirez-Talavera received sentences of 5 years each. The last two have completed their sentences but I remitted their outstanding fines. Antonio Camacho-Negrón was released in 1998 on parole but was later rearrested for parole violation. I was informed that he would be eligible for release at any time if he agreed to abide by the parole requirements. In light of his refusal to comply with the conditions of his first release, I refused to commute his sentence, although I did offer to remit his outstanding fines. He rejected this offer.

Finally, I commuted the sentence of Juan Enrique Segarra-Palmer so that he would be eligible for parole after serving 19 years in prison, consistent with the time served by the Chicago petitioners.

The timing of my decision was dictated by the fact that my former counsel, Charles Ruff, committed to many of those interested in this issue that he would consult with the Department of Justice and make a recommendation to me before he left the counsel position. Pursuant to this commitment, I received his recommendation in early August. As he recently indicated to the New York Times, his recommendation and my decision were based on our view of the merits of the requests—political considerations played no role in the process.

As you know, last week, I asserted executive privilege in the face of Chairman Burton's subpoena seeking memoranda and testimony concerning the decision process. I did so after receiving the opinion of the Attorney General that such assertion was proper as the demand clearly intruded on areas reserved to the President under the Constitution.

Grants of clemency generate passionate views. In vesting the pardon power in the President alone, the framers of our Constitution ensured that clemency could be given even in cases that might be unpopular or controversial. The history of our country is full of examples of clemency with which many disagreed, sometimes fervently. When Theodore Roosevelt granted amnesty to Filipino nationals who attempted to overthrow U.S. control of the Philippines, when Harry Truman commuted the death sentence of Oscar Collazo and when Jimmy Carter commuted the sentence of Collazo and other Puerto Rican nationalists who had fired upon the

House of Representatives, they exercised the power vested them by the Constitution to do what they believed was right even in the face of great controversy. I have done the same.

I hope this information is helpful in understanding my decision and that you will share it with members of your committee and others who might find it useful.

—Sincerely, Bill Clinton.

Mr. WAXMAN. Well, I can imagine a decision like this is a very difficult one for a President to make. He knows he alone must make it and that there are people telling him that it is a good idea and people telling him it is not a good idea. And I can particularly see how in light of the strong opposition of many people, including the head of the FBI and others with whom he had consulted, that he could have to take all of their views in consideration. And in our own committee files that have been sent to us by the administration, we have a letter which I will ask unanimous consent to make part of the record. That is a letter, one by Congressman Henry Hyde to Mr. Freeh and then his response to that letter, and I would like to put that in the record.

Mr. BURTON. Without objection.

[The information referred to follows:]

JOHN CONNERS, JR. UNKNOWN
JOHN FRANK, MASSACHUSETTS
HOWARD S. STEARNS CALIFORNIA
NICK BOUCHER VIRGINIA
FRANK MUMFORD NEW YORK
ROBERT C. BOBBY SCOTT NEW
JERSEY
WILLIAM H. WATTS, ROBERT C. JACK
TODD COOPER CALIFORNIA
SMITH JACKSON LEE TEXAS
WILLIAM WATERS CALIFORNIA
HARVEY T. WEINSTEIN MASSACHUSETTS
WILLIAM DE BELLAMONT MASSACHUSETTS
ROBERT WEISER ILLINOIS
STEVEN R. BOWMAN NEW JERSEY
TOMMY TALMON, NEW JERSEY
ANTHONY D. WILSON NEW YORK

MAJORITY + MINORITY
MAJORITY CARE + EQUITY

The Honorable Louis J. Freeh
Director
Federal Bureau of Investigation
U.S. Department of Justice
10th and Pennsylvania Avenue, N.W.
Washington, D.C. 20535

As the F.B.I. exhausts resources in order to identify, arrest and prosecute terrorists, I am inquiring into your position with regard to President Clinton's recommendation for the commutation of prison and/or fine sentences for sixteen members of the Armed Forces of National Liberation ("F.A.L.N.").

It is my understanding that these sixteen individuals have been convicted for terrorist activities related to their efforts to gain independence for Puerto Rico between 1974 and 1983. It has been reported that these members of that group are responsible for at least 130 bomb attacks on political and military targets within the United States and Puerto Rico. Now, the President is recommending that they be granted clemency after pressure from groups claiming that their sentences were too harsh.

I would greatly appreciate your views with regard to the President's clemency recommendation, and specifically with regard to whether you view the proposed conditional terms sufficient to justify such a commutation. I thank you for your attention to this matter, and would appreciate a response from you by the close of next week on this very important issue.

Sincerely,

HENRY L. HYDE
Chairman

Gary, Roger, Susan, Elisa, Robert, Paul, Faith

Attached is a copy of the draft letter that the FBI has sent to Neil Gallagher for his approval. Apparently, John Collingwood has just looked at the letter and is recommending that Gallagher **NOT** approve the letter – I had mentioned that DOJ maintains that clemency is a matter within the Executive Branch and that Congress may not have access to the advice that DOJ provides the President regarding clemency.

Craig



DRAFT

U.S. Department of Justice

Federal Bureau of Investigation

Office of the Director

Washington, D.C. 20535

DRAFT

Honorable Henry J. Hyde
 Chairman
 Committee on the Judiciary
 House of Representatives
 Washington, DC 20515

Dear Mr. Chairman:

I appreciate your letter of August 27, 1999, inquiring as to the FBI's views with regard to President Clinton's recommendations for the commutation of sentences of sixteen members of the Armed Forces of National Liberation (FALN).

The request for commutation of the sentences of these imprisoned Puerto Rican terrorists associated with the FALN was first made in 1994. Since that time, in response to requests for comments, the FBI has consistently advised the Department of Justice (DOJ), in writing, that the FBI was opposed to any such pardon and/or commutation of sentences for any of these individuals. As recently as June 28, 1999, the FBI, in written correspondence, advised DOJ that the FBI continued to oppose the release of these terrorists. Specifically, the FBI pointed out to DOJ that as active members of Puerto Rican terrorist groups, these individuals sanctioned, supported and/or directly or indirectly participated in activities resulting in no fewer than nine fatalities, hundreds of injuries, millions of dollars in property damage, and armed attacks on U.S. Government facilities.

DOJ was also advised the FBI had reason to expect the release of these individuals would "psychologically and operationally enhance" the ongoing violent and criminal activities of Puerto Rican terrorist groups. The FBI also pointed out that any such pardon of the "currently incarcerated terrorists would likely return committed, experienced, sophisticated and hardened terrorists to the clandestine movement."

As the request for pardons had been pending since 1994, the FBI was unaware that any such commutation of sentences was actually being contemplated or imminent. With respect to the condition attached to the commutation of sentences by the President, (i.e., that the terrorists renounce violence as a form of protest) the FBI had previously advised DOJ that "few of the current prisoners have expressed remorse for their crimes or for their victims; rather, most remained committed to violence as a means to achieve Puerto Rican independence."

DRAFT

Honorable Henry J. Hyde

It is evident from the foregoing that the FBI was unequivocally opposed to the release of these terrorists under any circumstances and had so advised DOJ.

If I may be of any further assistance, please do not hesitate to contact me.

Sincerely yours,

Louis J. Freeh
Director

1 - Honorable Janet Reno
The Attorney General
Department of Justice
Washington, D.C.

Mr. WAXMAN. This is a draft response by Mr. Freeh and there is no indication that it was actually sent, but this was part of the records that we have before us in our committee deliberations. And Mr. Freeh said:

As recently as June 28, 1999, the FBI in written correspondence advised DOJ that the FBI continued to oppose the release of these terrorists. Specifically the FBI pointed out to DOJ that as active members of Puerto Rican terrorist groups, these individuals sanctioned, supported and/or directly or indirectly participated in activities resulting in no fewer than nine fatalities, hundreds of injuries, millions of dollars in property damage, and armed attacks on U.S. Government facilities. DOJ was also advised the FBI had reason to expect the release of these individuals would, quote, "psychologically and operationally enhance," end quote, the ongoing violent and criminal activities of Puerto Rican terrorist groups.

The FBI also pointed out that any such pardon of the, quote, "currently incarcerated terrorists would likely return committed, experienced, sophisticated and hardened terrorists to the clandestine movement," end quote.

These strong views were sent to the President and he had to take them into consideration, as he said in his letter.

Mr. WAXMAN. Mr. Chairman, I don't know what I would have done——

Mr. BURTON. Would the gentleman yield for a question on that? You said that was a draft letter. Was that sent to the President, that draft letter?

Mr. WAXMAN. No, it was a draft letter to Congressman Hyde by Mr. Freeh.

Mr. BURTON. And the President was aware of that?

Mr. WAXMAN. Well, I don't know if he was aware of this draft letter, but he was certainly aware of Mr. Freeh's views because as Mr. Freeh points out, he expressed those views in the past and as recently as June 28, 1999, of the FBI opposition to this offering of clemency to these prisoners.

I have to say that I don't know what I would have done if I were President of the United States. I also have to say in all honesty I would never want to be the President of the United States for many, many reasons and the chairman would probably want to agree with my conclusion. But a President has under the Constitution decisions over which we have checks and balances, over which we have a say. But he has one at least, maybe others, but one unique prerogative and that is to decide the fate of individuals who are in prison. He did not pardon these people, which would have been to forgive their crime. He in effect paroled them or granted clemency. And clemency means to moderate the severity of the punishment, and the President decided, as he pointed out in his letter, after hearing from people on both sides to reach that conclusion.

I hope this information that I am sharing with everybody today will answer many of the questions that the chairman raised in his opening statement. Very legitimate questions as to why the President made the decision he has.

Each of us can agree or disagree with his decision, but that decision was his and his alone to make. So, Mr. Chairman, I know this is the third hearing on this issue, I know we have witnesses who have their heartfelt pain to share with us, and I look forward to being here with you and the other members of the committee so that they can present their arguments and their case to all of us and to the American people.

I yield back the balance of my time.

Mr. BURTON. Thank you, Mr. Waxman. I think that I ought to clarify one thing that may not be actually correct in the President's letter. A Federal district judge found that Juan Segarra-Palmer had organized and taken part in the attack at Sabina Seca on a United States Navy bus that killed two sailors that were on their way to a radar station and wounded nine others. So he was directly involved in the murder of two American sailors and the wounding of nine others. I have not had a chance to look at the rest of the letter but that part I do not think is accurate.

[The prepared statement of Hon. Judy Biggert follows:]

JUDY BIGGERT
13TH DISTRICT, ILLINOIS

COMMITTEES:
BANKING AND FINANCIAL SERVICES
GOVERNMENT REFORM
SCIENCE



WASHINGTON, D.C. OFFICE:
506 CANNON HOUSE OFFICE BUILDING
7071 725-3616
FAX (202) 225-9420

ILLINOIS OFFICE:
115 W. 55TH STREET
SUITE 100
CLARENDON HILLS, IL 60514
(800) 655-2052
FAX (800) 555-1061

Congress of the United States
House of Representatives
Washington, DC 20515-1313

Statement of Representative Judy Biggert (R-IL)
Before the House Government Reform Committee
Hearing on Presidential Clemency for FALN Terrorists
September 21, 1999

Mr. Chairman, good afternoon. Thank you for calling this important hearing to examine President Clinton's offer of clemency to sixteen members of the FALN. This is a matter that has raised a number of troubling political, legal and moral questions.

Seditious conspiracy, possession of unregistered firearms, interstate transportation of a stolen vehicle, interference with interstate commerce by violence, and transportation of firearms with intent to commit a crime -- these are the crimes on which the recently released FALN members were convicted. Many of these crimes were carried out in the 1970's and 80's in my home state of Illinois. In fact, a number of them occurred just blocks away from my parents' home.

While none of these individuals were convicted of direct involvement in the 6 deaths attributed to FALN activities, there is no doubt that all 16 were members of the group that used violence and hate to obtain their goal -- Puerto Rican sovereignty. In all, FALN has reportedly been linked to 130 bombings, kidnapping attempts, armed robbery -- even vandalizing former President Carter's 1980 Chicago campaign headquarters.

Does membership in this militant organization brand those who have been offered clemency as terrorists? I think it does. Resorting to criminal behavior or using violence against innocent people is not an acceptable way for any individual or organization to achieve its political objectives. And President Clinton's decision to grant clemency has set an extremely bad precedent.

What kind of message are we sending to terrorists and criminals -- both here and abroad? I think America's resolve to wage an unyielding war against terrorism has been called into question.

What kind of message are we sending to our law enforcement agencies about the rule of law? I find it troubling that we might so easily dismiss the exhaustive efforts of our law enforcement officers -- and the injuries they personally sustained -- to stop this group from committing further acts of violence.

(MORE)

I am extremely alarmed by reports indicating the President released these individuals despite the strong objections of many of our Nation's top law enforcement agencies. I find his actions are even more disconcerting when we look at his track record on clemency requests. Why has the President chosen to grant these 16 individuals clemency when he has denied more than three thousand others?

I would also like to know how the Administration will ensure that the conditions of the release are kept. How will the Administration monitor the 11 individuals that have been released to ensure they do not associate with one another or engage in criminal behavior? I would also be interested in knowing the extent to which politics played a part in this decision. Finally, did the White House follow normal procedures when considering this clemency?

Unfortunately, we may never know the full answers to these questions. I am disappointed and disheartened that the President has claimed executive privilege on documents relating to this matter. He could easily put an end to speculation about political motivation by releasing documents that prove otherwise.

I am not calling into question the President's Constitutional right to grant clemency. I am saying that the lack of credible information on the origin of this deal or the factors that went into making this decision are very troubling. The American people, the victims of FALN activities, and law enforcement agencies deserve to know the truth.

Again, Mr. Chairman, I thank you for holding this important hearing. I look forward to hearing from our witnesses, particularly those sitting on the first panel. I know their stories will be compelling. I also hope to hear the answers to the questions I have posed.

Thank you.

Mr. BURTON. We will now recognize Mr. Romero-Barceló, the Resident Commissioner from the great land of Puerto Rico.

**STATEMENT OF HON. CARLOS A. ROMERO-BARCELÓ, A
REPRESENTATIVE IN CONGRESS FROM PUERTO RICO**

Mr. ROMERO-BARCELÓ. Thank you, Chairman Burton and Ranking Member Waxman, members of the Committee of Government Reform. For the record, I am Carlos Romero-Barceló and I am the sole elected Representative in Congress of the United States of the 3.8 million disenfranchised American citizens in Puerto Rico.

I appreciate the opportunity to testify before you this afternoon at this hearing where you will consider President Bill Clinton's clemency to 16 terrorists.

I would like to address this issue from the perspective of the vast majority of law-abiding patriotic citizens in Puerto Rico and I want to make it perfectly clear that this group of terrorists neither represent nor speak for us. We abhor violence. I find offensive any effort that attempts to categorize and judge all Puerto Rican-Americans by the actions of these extremists whose goal was to isolate and discredit their fellow Puerto Ricans before the eyes of their fellow citizens, for the purpose of having the Nation reject Puerto Rico and give us independence. Virtually every Puerto Rican-American repudiated their actions then as they repudiate them now. In fact, independence as a status option has been rejected by at least 95 percent of all Puerto Rican voters at each election during the past 50 years and by over 97 percent of the electorate in the status referendum held in December 1998.

Between 1974 and 1983, a small group of political extremists waged an armed campaign of terror and violence that shocked, horrified and even humiliated Puerto Rico. The group calling itself the Armed Forces of National Liberation or, in Spanish, FALN, principally operated from New York, Chicago, and Hartford. A smaller group that called themselves Los Macheteros, operated in Puerto Rico. Declaring themselves at war with the United States, they carried out over 100 major armed attacks in the mainland and in Puerto Rico with the purpose of imposing independence for the island by means of violence, threats and terror. I would like to stress that their aim was to obtain independence by force, by terror and by violence.

In New York, in an attack at the historic Fraunces Tavern, 4 people died and 55 people were injured. In Puerto Rico, a policeman was ambushed and killed. Another group attacked a Navy bus with people who were not armed. The attackers armed with sub-machine guns sprayed the bus with gunfire and killed two sailors and seriously injured nine others. Clearly, these are acts of terrorism. By 1983, after the members of FALN and Los Macheteros were apprehended, the decade-long campaign of terror stopped.

The horror of the actions of these terrorists has been brought once more to national attention by President Clinton's offer of conditional release to 16 of the terrorists who have served terms averaging over 15 years. The offer of clemency was contingent on specific conditions that required a written request for clemency, the repudiation of violence, intimidation and the use of violence to impose their political ideals. In a democracy of peace loving citizens

nothing less than this can be accepted. The individuals involved were not tried or convicted in Federal court for any act of murder or act of violence against another person, because for one, those were not crimes at the times when they were convicted. They were not Federal crimes. The Antiterrorism Act was not enacted until 1990, and further amended in 1996. All of these terrorists were tried on or before 1983, so they could not have been indicted by the Federal Government for those crimes nor for being accessories or accomplices to those crimes. However, they have been members of a terrorist organization. They have never denied as having been part of the FALN or Los Macheteros, and if they didn't participate directly in any of the deaths or injuries, they remained as active members of the organizations and applauded, encouraged and supported those crimes both personally and financially.

Amnesty International, the leading human rights organization in the world, did not consider them prisoners of conscience because the acts they were accused of were violent in nature.

President Clinton's humane offer was accepted by 12 who individually asked for clemency; have renounced violence, and agreed to abide by parole conditions. In short, they met the conditions that seek to gradually incorporate them as productive members of civil society.

I did not oppose the conditional release of these criminals, but I did oppose their unconditional release. I opposed it because the unconditional release of these terrorists would have sent out a negative message throughout the world that our democracy accepts violence intimidation and terrorism to achieve political goals. We don't. I also opposed the unconditional release of these terrorists because it would have insulted their victims, the victims's families and all of us in Puerto Rico.

I believe that what the President has decided is not only the correct thing, it is the humane thing. One of the fundamental requirements for the parole of the criminals in our legal system is the public acknowledgment of responsibility and contrition. The conditions for their release required that each one of them signed a statement asking for clemency. Each one had to renounce violence as a means of obtaining their political purposes and they will be subject to parole conditions.

When criminals are incarcerated, they are placed in prison for three basic reasons. First of all, it is to punish them for the crime they have submitted; second, to protect society from the criminals; and third is to rehabilitate them and give them the opportunity to be rehabilitated. By granting them clemency under special conditions where they have renounced violence and allowing them to reintegrate themselves in civil society under controlled conditions, then we can see if they really meant it when they renounced violence for their purposes. If not, they can be imprisoned again without a new trial and they will have to serve the remainder of their sentences.

This is why I consider that the President's position is a responsible one, and one that we should all support. I was one of the few persons who raised his voice against an unconditional release in Puerto Rico. Those who supported the unconditional release were either misinformed, misled or showed no regard for the peace and

security of their fellow citizens. Most of these terrorists were not born in Puerto Rico. Although their parents came from Puerto Rico, most of them were born and lived in Chicago or the New York area. From there they attempted to impose their political beliefs on the people of Puerto Rico.

You will be hearing today from the victims of the FALN terrorism and law enforcement officials. On behalf of their fellow citizens in Puerto Rico, I wish to convey to them our deepest sympathy.

Mr. Chairman, I appreciate the opportunity to express the concerns of the vast majority of Puerto Rican Americans who, because of the acts of the terrorists, have been subjected to discrimination in their communities throughout the Nation. Puerto Rico has also been a victim of the terrorist violence.

Some have attempted to characterize the terrorists as freedom fighters. Nothing could be further from the truth. The fact that we are disenfranchised and lack representation is as much our fault as it is the fault of Congress. This House tried to start a process to put an end to the colonial relationship by authorizing a referendum with a commitment to act on the results, but the Senate refused to act on it. The people of Puerto Rico unfortunately gave their consent to the colonial relationship and voted to accept it in 1952, calling the territory a commonwealth. Although this relationship called commonwealth has now been rejected by a majority of voters in 1993 and in 1998 referendums, there has been no majority for a definite solution. Regrettably this relationship of inequality and lack of participation in the democratic system, this disenfranchisement provides cover for terrorists in the rest of the world who see us as the last American colony with more than 1 million people.

And I wish to leave you with a thought: that the real freedom fighters are the 197,000 Puerto Rican Americans who served the United States in the defense of democracy in times of war during this century. The real freedom fighters are the nearly 150,000 Puerto Rican Americans who have served and the thousands who continue to serve the Nation in times of peace.

Mr. BURTON. Do any Members have any questions of Mr. Romero-Barceló? If not, do you have a question? Mr. Davis.

Mr. DAVIS OF ILLINOIS. Thank you very much, Mr. Chairman. Let me also first of all express my empathy and concern for those whose families and they themselves have been directly affected by the actions and activities of the FALN. Representative Romero-Barceló, my question is do you think it is possible to separate the actions of individuals from the actions of a group that they may be a part of?

Mr. ROMERO-BARCELÓ. It depends on what kind of a group and what that group's policy is and whether the individuals are aware of the acts of the group or not. In this case, there is no doubt that the individuals were part of the group. They have acknowledged it themselves. They have also—there is no doubt that they knew of the facts that were being committed by those groups, because it was they themselves claimed to have committed the acts. So, therefore, they knew what was happening and they continued to be members of the group; so therefore, yes, we cannot disassociate them from the acts of the group because they are accomplices. The

only thing is, as I explained, at this point in time they could not be charged as accomplices for murdering or hurting anyone by the Federal Government because those were not Federal crimes but they knew that was happening and they not only knew about it, they applauded it, they stole money for it, they prepared for it. They had the bombs stashed away and other munitions stashed away for other acts.

Some of these members were caught with a warehouse of bombs and other explosives. So I don't think that you can disassociate them from these acts. It is not the same as when somebody belongs to an organization and somebody else does something over which they have no control or they don't even know about.

Mr. DAVIS OF ILLINOIS. We continue to hear different representations in terms of those who suggest that the individuals in question were involved in some direct activity and others who suggest that there is no proof that the individuals were involved in any action or activity where violence was direct.

Do you, in terms of your understanding of them, were they, to the best of your knowledge, instances where they were involved or were they, as you indicated a moment ago, accomplices?

Mr. ROMERO-BARCELÓ. The accomplice is involved. The accomplice is as guilty as the individual, as the main person. When two or more people rob a bank, the one that is waiting for them to rob outside in the car on the lookout is as much—has as much guilt about the crime as the ones that are in there with the guns and holding the people up to hold up the bank.

I think this is what we learn in law, that in most jurisdictions the accomplices are as guilty of the crime as the principal.

Mr. DAVIS OF ILLINOIS. And so your position is whether they were directly or not, they still were part and would have been just as guilty and, therefore, your position is that the sentencing was warranted in terms of the length of time that they were given?

Mr. ROMERO-BARCELÓ. I think even their attitude in the trial demonstrates that they were aware. Most of them refused to defend themselves and they allege that they were prisoners of war because they were in a state of war against the United States. So how much more of an acceptance of the facts, of acceptance of their violent acts can you have than that statement? When they say that they are in a state of war against the United States and that they refuse to defend themselves because they are not citizens, they are prisoners of war?

So some of them even threatened the judges and said that they did not kill the judge because they had their hands cuffed, otherwise they would get up and choke him right there.

Mr. DAVIS OF ILLINOIS. Thank you very much. I have no further questions. Mr. Chairman, I wanted to say to Mr. Waxman that I really appreciated his reading the President's letter, because I think that the letter further revealed the careful consideration that this matter was given. And I happen to be one who agreed with the President in terms of viewing this as an opportunity to look at perhaps even some different approaches to the way that we look at democracy, and that rather than just thinking in terms of punishment, rather than just thinking in terms of how harsh we could be, but could we look at it as an opportunity to reconcile, to experience

the act and movement toward the act of healing and being in agreement with former President Jimmy Carter, to be in agreement with Coretta Scott King, to be in agreement with Bishop Tutu, who obviously has seen much horror, much difficulty, but yet understands that democracy can be fellowship as well as punishment.

And so I thank you very much for your testimony and I yield back the balance of my time.

Mr. BURTON. I am going to yield to Mr. Horn. I am just going to take a minute of my 5 minutes, and then I will yield to Mr. Horn.

We live in a different age than I think any previous American has ever lived in. There have been killings, we have had Presidents assassinated and we have had a lot of problems like that but we have not had serious acts of terrorism take place like those we have seen in recent years. The Oklahoma City bombing hurt everybody in America. Everybody in this country felt for those kids that were carried out of that nursery there in pieces.

Everybody was concerned and felt terrible about the tragedy that occurred at the World Trade Center. People were killed. People who were granted clemency by the President, especially Juan Segarra-Palmer, who was involved in killing two sailors, shooting up a bus with machine guns on unarmed sailors, killed two of them and wounded nine, that is another act of terrorism. And I really and truly believe that the American people believe the time has come for us to put those people away and not let them back out on the streets.

Granted, the President has the right under the Constitution to grant clemency to these people. But when you see buildings being blown up in New York and Oklahoma City and you see all these little kids coming out maimed or killed, you say shouldn't they be kept off the streets, these people? And I ask the question today, should we start thinking about clemency for the people that did that horrible thing at Oklahoma City or the World Trade Center? Because if you follow the logic that I am hearing, you know, you probably ought to consider that. I mean, this Mr. Segarra-Palmer, who was pardoned was involved in murdering two American sailors. They are dead just like the people at the World Trade Center in Oklahoma City, and my question is, you know, when do you start keeping these people off the streets?

I yield the balance of my time to Mr. Horn.

Mr. HORN. Thank you very much, Mr. Chairman. I think the President obviously could do that, we all know, under the Constitution. I think he made a mistake when he is delivering people out to society that have a violent record. I had contact with the Puerto Rican independence movement in the mid-1970's when I was vice chairman of the United States Commission on Civil Rights. We went to New York to look at the schooling for Puerto Ricans, black students, white students in New York. The independence movement was very active. They came, demonstrated, raised Cain, and I have a picture in the archives of a chair coming right for us. That person should have been in the Olympics, and three of the six commissioners were university presidents so we were sort of used to that anyway. We just ducked.

This movement is frankly counterproductive. Personally I think Puerto Rico ought to be independent. I think we had common sense when we put into the Philippine compact that they would be free in 1946. We did not know about a world war or anything else. But when 1946 came, the Philippines was independent, and that should have happened to some of the other acquisitions of the Spanish American War. And I think their violence is just slowing down what makes sense, which is have Puerto Rico be its own country.

Thank you, Mr. Chairman.

Mr. BURTON. Does anybody else have questions? I yield to the gentlewoman.

Mrs. BIGGERT. Thank you, Mr. Chairman.

I think that a grave concern that we have had is that the President's decision to grant clemency has really set a precedent. And we don't know where that's going to go and what kind of message we're sending to terrorists and criminals both here and abroad, and I think it calls into question the United States' resolve to wage an unyielding war on terrorism.

So my question to you is, is the FALN still active in Puerto Rico and will the release of these people cause a resurgence, whether it be by peaceful measures or by violent measures, even though they are supposed not to be involved in this at all? Since only 2.5 percent of the people, granted, or one in two voted for independence, is the FALN still active?

Mr. ROMERO-BARCELÓ. As far as we know, there have only been—there have been two acts that were committed this past year that were allegedly claimed to have been committed by the FALN Los Macheteros. One was, in an aqueduct under construction to bring water into the metropolitan area from one area of the island to the other, and there was something that blew up or something in the project; they claimed they had done it. And then there was another one that was, a bomb that exploded in front of some other building.

These are the only two incidents that have happened since 1983. One of those two incidents, the organization said that they did not—whoever claimed it on their behalf was lying because they didn't do that. But one of them has remained—is being claimed by them. Outside of that, there has been no other activity.

I guess the hope is that the people, the amount of time that they did serve is sufficient to make them reconsider and that they—their commitment to renounce violence is sincere. Whether it will be or not, I have no way of knowing. All we can do is hope that they're sincere when they signed the statement renouncing violence.

Mrs. BIGGERT. You don't think they will make other members want to get reinvolved, or kind of stoke up—

Mr. ROMERO-BARCELÓ. I'm sure there will be some persons who would like to get them reinvolved. There are still a couple of—one of the big leaders is in Cuba. He's being hunted. He hasn't been arrested. He escaped. He was in New York in a hospital; he escaped from a hospital and he went to Cuba.

Then there's another one that is still treated at large. I'm sure they would probably like to get them back involved, but whether they will or not, there's no way we can know until it happens. At

least by being under probation, they are—they can be put back with the mere suspicion that, given their activities, they are involved. They don't have to have a trial to prove that they're guilty. They just have to pull them back in if there's any danger.

Mr. BURTON. My time has expired.

Mrs. Mink, did you have any questions?

Mrs. MINK. No. Thank you.

Mr. BURTON. Mr. Ose.

Mr. OSE. Thank you, Mr. Chairman. A couple of questions if I might. Before I proceed, with great respect to my friend, Mr. Davis of Chicago, I want to completely disassociate myself from his remarks of a few moments ago relative to the consequence of this kind of behavior.

Mr. Romero-Barceló, do you know of anyone who requested that the President grant this clemency?

Mr. ROMERO-BARCELÓ. Requested the President?

Mr. OSE. Yes.

Mr. ROMERO-BARCELÓ. I think the whole movement was begun and put together by a Member of Congress.

Mr. OSE. Who was that?

Mr. ROMERO-BARCELÓ. Luis Gutierrez from Chicago.

Mr. OSE. Have there been other Members of Congress—

Mr. ROMERO-BARCELÓ. Who supported that? Nydia Velázquez from New York has supported it, and I think Jose Serrano has supported their unconditional release. They have been supporters of the unconditional release.

Mr. OSE. The President's letter talks about an ongoing effort over the last 6 years from various Members of Congress, religious and civic leaders, as well as others, urging him to grant clemency. I understand the process prisoners have is to request clemency.

Mr. ROMERO-BARCELÓ. That's what I thought. They told me that not necessarily—that the lawyers, for instance, can do it on their behalf and others can do it on their behalf as has been done in other cases. I don't know. That's what I've been told. I thought the same way as what you just said.

Let me tell you one thing. The people of Puerto Rico were totally misled by the information. In the first place, all of the press of Puerto Rico always refer to them as political prisoners. I was always careful to say, when they ask me about the political prisoners, I say, "who are you talking about? They are not political prisoners. There are politicians in prisons, but I don't know of political prisoners in our system." I would also say that political prisoner implies that they're prisoners of conscience. And these are not prisoners of conscience. They're prisoners because they have committed felonies.

But the press always calls them "political prisoners," everybody calls them "political prisoners." The information that they gave, that these people had never been involved in the commission of a serious act. And the people of Puerto Rico are very compassionate, very compassionate; and they felt that, well, they had been in long enough. They were always—everyone was told that these people have served more than anybody else for crimes similar or even for worse crimes than they had committed.

People are very sympathetic. They joined the movement to ask for unconditional release. And there was no voice out there. No voice out there saying no. I was the only voice saying to the President, look, if you are going to consider any clemency, it has to be restricted. They have to ask for it. They have to at least renounce violence as a means for obtaining their release and they have to be under supervision. They have to be under probation.

There was no—everybody else was asking for unconditional release except the Governor, who said they should be treated individually.

Mr. OSE. If I understand correctly, at least on the surface, it appears perhaps some of these prisoners didn't even ask for clemency. The President, for whatever reason, may have gone and offered it.

Mr. ROMERO-BARCELÓ. That's why the offer says that they must ask for it and they must sign a request for clemency.

Mr. OSE. So in effect, you can have clemency if you ask for it?

Mr. ROMERO-BARCELÓ. That's right.

Mr. OSE. Is that a negotiation?

Mr. ROMERO-BARCELÓ. I don't know if there were negotiations directly with the President or not. I think it was just requested.

Mr. OSE. Would you consider that approach to be a negotiating approach? If you say this, we'll do that? That reminds me of doing business. Negotiating.

Mr. ROMERO-BARCELÓ. I don't think it's negotiation. The President said, here, you can be released provided you do this. I don't think there was any negotiation. There was just a condition imposed on the release.

Mr. OSE. The other question I want to come back to is, besides Members of Congress and the folks that you're familiar with in Puerto Rico, are there others that you—and the reason I ask this question is we can't get the information, for instance, from the administration. Are there others who have urged him to grant clemency, that you know of?

Mr. ROMERO-BARCELÓ. They have been mentioning it here today: President Carter; Bishop Desmond Tutu; Coretta Scott King; the Archbishop in Puerto Rico; a lot of the churches in Puerto Rico; all the Protestant churches; churches here in the mainland; civic groups here in the mainland and churches in Chicago area, the New York area. This was, at least in our press and some of the local press in New York and Chicago, this was there but nobody raised a voice or opposed it. Nobody was opposing the request for the unconditional release.

Mr. OSE. If that were the case, if all the information was proclemency, why wouldn't we be able to get that information out of the administration? Why wouldn't they release those documents to us?

Mr. ROMERO-BARCELÓ. I don't know.

Mr. OSE. Thank you, Mr. Chairman. I yield back.

Mr. WAXMAN. Would the gentleman just yield to me?

Mr. OSE. Certainly. I always yield to my good friend.

Mr. WAXMAN. Thank you.

Just to clarify for the record, I speak as someone who is not for or against what the President did; I'm still listening to the arguments. But the administration did submit 10,000 pages of docu-

ments, including a list—and I'll give it to the chairman to make part of the record—of Members of Congress and some others that requested clemency. As I pointed out—the release, as well—information about people who rejected clemency, like Mr. Freeh from the FBI. You asked the question and I just thought you ought to know we did get some of that information available to us.

Mr. OSE. I thank my friend.

Mr. WAXMAN. Thank you.

Mr. BURTON. I think we ought to clarify one thing. I went through those documents with my staff. Almost all of them were just postcards, notes, and form letters that were sent into the administration, asking for clemency, from a whole host of people in Puerto Rico, but there was not really much information there.

Thank you, Mr. Romero-Barceló. I do not think anyone else has any questions.

Our next panel is our good friend and colleague, Vito Fossella of New York, who will be introducing Diana Berger Ettenson, Thomas Connor, Detective Richard Pastorella and Detective Anthony Senft. Would you all come forward, please.

If you all would remain standing. I know you are going to be very forthright, but as a matter of course, since we are going to have people from the executive branch here, we would like for you to stand and raise your right hands.

[Witnesses sworn.]

Mr. BURTON. Mr. Fossella, Congressman Fossella, sir.

STATEMENT OF HON. VITO FOSSELLA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. FOSSELLA. Chairman Burton, Ranking Member Waxman and distinguished ladies and gentlemen, thank you for the opportunity to appear before you this morning and to testify at today's hearing, entitled, "Clemency for the FALN: A Flawed Decision?"

For the past month, I along with others, especially the victims of FALN activities have been waging a battle to bring public pressure on the White House to rescind the President's offer of clemency to 16 terrorists, each of whom played an integral role in the FALN terrorist organization. Despite an overwhelming outpouring of support against the White House sweetheart deal and despite the unanimous and staunch opposition as so reported of virtually every Federal law enforcement organization, this clemency offer unilaterally reversed America's long-standing policy of neither negotiating nor sympathizing with terrorists.

There are many reasons why we undertook this uphill battle, not the least of which was that I feared the release of these individuals would send the wrong message to terrorists who have a bull's-eye on American cities. Today, sadly, I must report that the message has been heard loud and clear. It appears that terrorists who have long been asleep have recently been awakened.

Last week—I don't think this has been reported here—the leader of Los Macheteros—Congressman Romero-Barceló alluded to them—a ruthless terrorist organization that claimed responsibility for bombings and other acts of violence, along with the FALN, throughout the 1970's and 1980's emerged from a decade of hiding

to issue a new threat against the United States, a potential terrorist plot aimed squarely at our Nation and our people.

In his statement, Filiberto Ojeda Rios told WPAB, a Puerto Rican radio station, "If they, the United States Navy, start bombing Vieques again and they threaten the island's population or those carrying out acts of civil disobedience, they will have to face the consequences because Los Macheteros will not remain with their arms crossed, you can be sure of that."

He added that Puerto Rico should take full advantage of "this historic moment" and battle against the "revolutionary offenses" being developed by the U.S. Government, the FBI, Resident Commissioner Carlos Romero-Barceló and others.

Is it any surprise that just days after these terrorists have been released that America's received this new threat of violence? Is it any surprise that the terrorist issuing the threat was associated with members of the FALN, four of whom, by the way, are also affiliated with the Los Macheteros group?

I'm deeply concerned that the release of these terrorists has reignited the flame that burns in the hearts of terrorists who kill without conscience and describe men, women, and little children as casualties of their twisted war. Our Nation cannot have a zero tolerance policy toward terrorism when we are willing to allow terrorists to walk out of jail free.

The White House defends this sweetheart deal by claiming the terrorists let back onto America's streets were not the same terrorists who proudly claim responsibility for more than 130 bombings during the 1970's and 1980's. Never mind that several of the terrorists released were captured on videotape making bombs, as you pointed out. Never mind that the self-proclaimed ringleader of this terrorist circus, who is now in exile in Cuba, declared that the FALN operated under a collective form of leadership. Never mind, since these terrorists have been locked behind bars, not one bomb has exploded nor has one single American has been killed by the FALN, at least as far as I know—and that addresses, I believe, Mrs. Biggert's comment before about, have there been any terrorist activities? No, because they've been behind bars.

The fact is that these individuals knowingly stepped aboard a train of terrorism, and as a result, should take full responsibility and be held accountable for all FALN violence, at least to the full extent of the law.

The nightmare of this notorious terrorist network goes back many years. On January 24, 1975, the FALN bombed the historic Fraunces Tavern in downtown Manhattan. This cowardly attack killed 4 and wounded over 40, all of them innocent people who were just enjoying a Friday afternoon lunch at one of New York City's most famous and popular restaurants. In a note found near the scene of the crime, the FALN took responsibility for the bombing and stated in part,

We, the FALN armed forces of the Puerto Rican nation take full responsibility for the especially detonated bomb that exploded at Fraunces Tavern with reactionary corporate executives inside. In our communique number 2, we warned the North American government that to terrorize and kill our people would mean retaliation by us. This was by no means an empty warning.

I underscore and let me emphasize the word “we” in that communique; “they” took full responsibility for the bombing, not “I.” I believe that underscores the collective responsibility of the FALN.

Over the next 9 years, the FALN systematically sought to spread fear and terror throughout our Nation. They planned and executed one devastating bomb after another, peaking with their most symbolic and vicious attack on New Year’s Eve in 1982 by striking at the heart of the rule of law, New York City Police Headquarters and the Federal building which houses the New York City headquarters of the FBI.

On that night, the lives of many people were changed forever, none more so than the three men who, over the past 4 weeks, I’ve come to regard as true heroes, not the so-called heroes that will be celebrating elsewhere, and his good friends. Detective Richard Pastorella lost sight in both eyes, all his fingers on his right hand, has 20 titanium screws holding his face together, and has undergone 13 major painful operations on his face alone.

His partner, Detective Anthony Senft, lost an eye, is partially deaf and has endured several separations on his hip and other areas of his body.

Their fellow police officer, Rocco Pascarella, lost his right leg and sustained a host of other injuries, including the partial loss of hearing.

On behalf of these brave men and so many others like those with me here today, Thomas Connor and Diana Berger, who both lost loved ones in the Fraunces Tavern bombing, we took on this cause in the hope the White House would rescind the offer of clemency after, and I repeat “after,” the terrorists rejected the original offer.

We also thought that the U.S. Congress could speak for those who could not. The innocent people who died at the hands of the FALN, the dozens who were injured and maimed, and all those who were ignored and brushed aside by this administration. We have given a voice to every American who is horrified and disgusted.

I believe that these terrorists have been granted life’s most precious commodities—freedom, liberty, and independence—despite the fact that they took those same commodities away from innocent people. We took on this cause to try and prevent the travesty of justice from occurring and to avoid sending a signal of weakness to terrorists.

By reviewing a request for clemency reportedly outside normal Department of Justice guidelines and granting clemency to dangerous terrorists, and then to place seemingly lenient conditions on their release is to undermine U.S. policy and the very foundation upon which this great Nation was built. To undermine that policy is to make the United States vulnerable to future terrorist attacks.

That’s not just my opinion, Mr. Chairman; an overwhelming majority in the House and 95 U.S. Senators, Democrats and Republicans, consider “making concessions to terrorists is a deplorable act” and that “the President should not have granted clemency to the FALN terrorists.”

One of the more egregious aspects of this clemency offer is that for years the victims of FALN violence have been trying to sit down with the Justice Department staff to present their side of the story.

Some victims did not even get the courtesy of a phone call that the terrorists were going to be released. Meanwhile, advocates for the terrorists have had the opportunity to meet with the Department of Justice officials, along with folks from the White House, regularly. It would have been nice and appropriate and the right thing to do to extend the same level of courtesy to these victims. They are the individuals who have been suffering all these years.

Some now argue, let's get this clemency behind us. I say, not so fast. Someone at the Justice Department or the White House still owes these victims and the United States, I believe, a public explanation as to why these terrorists were set free. In effect, the victims have been told to live with it, and it's none of their business.

We have an obligation to demonstrate whether there was a new threat posed by these terrorists. It has been reported that the Bureau of Prisons tapes exist, proving that the terrorists will engage in violence once they are released from prison. Is this the case? Is this true? Do these tapes exist?

The FBI has threat assessments on various terrorist organizations, and should we now be concerned about the threat of the FALN terrorists to our Nation? Should law enforcement agencies, which thought the FALN was a dead issue and was put to bed, now have to track these individuals, depleting valuable resources to combat crime and terrorism?

What are the conditions of the clemency? Are they allowed to meet with one another? According to the Parole Commission, these individuals are not permitted to associate with each other. There are reports, however, that these terrorists will be participating in a rally in Puerto Rico this week. Were we lied to? Will they be monitored? Will they be allowed to speak to one another? Is the administration willing to enforce the conditions of clemency? Will the terrorists be sent back to prison if they violate the terms of clemency?

We cannot turn back the clock and undo the damage that's been done here, Mr. Chairman. But we can and we must investigate this matter deeply to learn why the White House chose again, as has been reported, to ignore the unanimous recommendation of law enforcement agencies, to keep these terrorists where they belong, behind bars in Federal prison.

The 16 terrorists demonstrated no contrition for their actions, nor remorse for their reign of terror. They belong in prison and they should serve every last day of their jail sentence. America must show no sympathy for those who commit acts of terrorism on American soil.

As I pointed to in the past, there is this argument they were nowhere near the bomb scene. Well, let's just turn the clock back several years and think of the Oklahoma City bombing tragedy. Terry Nichols was nowhere near the bomb scene, and he was rightly sentenced to suffer in prison because he allowed so many other people to suffer. Could you imagine the outrage across this country if in 10 or 15 years the then-President of the United States steps forward and gives Terry Nichols clemency because he was nowhere near the bomb scene? There would be justified outrage.

Mr. Chairman, I want to thank you for your indulgence in allowing me to go beyond the normal 5 minutes, and I would like to in-

troduce some of the human faces affected by the FALN violence, and I trust their experiences and views will demonstrate how grave an issue this truly is.

I thank you again, Mr. Chairman, and members of the committee.

[The prepared statement of Mr. Fossella follows:]

Statement of Congressman Vito Fossella
"Clemency for the FALN: A Flawed Decision."
September 21, 1999

Chairman Burton, Ranking Member Waxman, ladies and gentlemen, thank you for the opportunity to appear before you this morning and testify on today's hearing: "Clemency for the FALN: A Flawed Decision."

For most of the past month, I, along with others, especially the victims of FALN activities have been waging a battle to bring public pressure on the White House to rescind the President's offer of clemency to 16 terrorists, each of whom played an integral role in the FALN terrorist organization. Despite an overwhelming outpouring of support against the White House's sweetheart deal, and despite the unanimous and staunch opposition of virtually every federal law enforcement organization, this clemency offer unilaterally reversed America's long-standing policy of neither negotiating nor sympathizing with terrorists.

There are many reasons why we undertook this uphill battle, not the least of which was that I feared the release of these individuals would send the wrong message to terrorists who have a bulls eye on American cities. Today, sadly, I must report that the message has been heard loud and clear. It appears that terrorists who have long been asleep have recently been awakened.

Last week -- and I don't think this has been reported in the United States -- the leader of Los Macheteros, a ruthless terrorist organization that claimed responsibility for bombings and other acts of violence along with the FALN throughout the 1970s and 1980s, emerged from a decade of hiding to issue a new threat against the United States -- a potential terrorist plot aimed squarely at our nation and our people. In his statement, Filiberto Ojeda Rios told WPAB, a Puerto Rican radio station,

"If they [the U.S. Navy] start bombing Vieques again, and they threaten the island's population, or those carrying out acts of civil disobedience, they will have to face the consequences because Los Macheteros will not remain with their arms crossed, you can be sure of that." He added that Puerto Rico should take advantage of "this historic moment" and battle against the "revolutionary offenses" being developed by the United States government, the FBI, Resident Commissioner Carlos Romero Barcelo and others.

Is it any surprise that just days after these terrorists have been released that America has received this renewed threat of violence? Is it any surprise that the terrorist issuing the threat was associated with members of the FALN? I am deeply concerned that the release of these terrorists has reignited the flame that burned in the hearts of terrorists who kill without conscience and who describe men, women and little children as casualties of their twisted war.

Our nation cannot have a zero-tolerance policy towards terrorism when we are willing to allow terrorists to walk out of jail free.

The White House defends this sweetheart deal by claiming that the terrorists let back onto America's streets were not the same terrorists who proudly claimed responsibility for more than 130 bombings during the 1970s and 1980s.

Never mind that several of the terrorists released were captured on videotape making bombs. Never mind that the self-proclaimed ringleader of this terrorist circus declared that the FALN operated under a collective form of leadership. Never mind that since these terrorists have been locked behind bars not one bomb has exploded nor one innocent American has been killed by the FALN. The fact is that these individuals knowingly stepped aboard a train of terrorism and as a result should take full responsibility and be held accountable for all FALN violence. This isn't just my opinion, it's the law.

The nightmare of this notorious terrorist network goes back many years. On January 24, 1975 the FALN bombed the historic Fraunces Tavern in downtown Manhattan. This cowardly attack killed four and wounded over forty, all of them innocent people who were enjoying a Friday afternoon lunch at one of New York City's most famous and popular restaurants.

In a note found near the scene of the crime, the FALN took responsibility for the bombing and stated in part:

"[We, FALN, the Armed Forces of the Puerto Rican Nation take full responsibility for the especially detonated bomb that exploded today at Fraunces Tavern with reactionary corporate executives inside....In our communique number 2, we warned the North American Government that to terrorize and kill our people would mean retaliation by us. This was by no means an empty warning...."]

Let me emphasize the "we" who took full responsibility for the bombing, not "I". This underscores the collective responsibility of the FALN.

Over the next nine years, the FALN systematically sought to spread fear and terror throughout our nation. They planned and executed one devastating bombing after another, peaking with their most symbolic and vicious attack on New Year's Eve 1982 by striking at the heart of the rule of law -- New York City Police Headquarters and the Federal Building, which houses the New York headquarters of the FBI.

On that night, the lives of many people were changed forever, none more so than three men who, over the past four weeks, I have come to regard as true heroes as well as good friends.

Detective Richard Pastorella lost sight in both eyes, all his fingers on his right hand, has 20 titanium screws holding his face together and has undergone 13 painful operations on his face alone. His partner, Detective Anthony Senft, lost an eye, is partially deaf and has endured several operations on his hip and other areas of his body. Their fellow officer, Rocco Pascarella, lost his right leg and sustained a host of other injuries, including the partial loss of hearing.

On behalf of these brave men and so many others like Joe Connor and Diana Berger, we took on this cause in the hope that the White House would rescind the offer of clemency after the terrorists rejected the original offer. We also thought the United States Congress could speak for those who could not -- the innocent people who died at the hands of the FALN, the dozens who were injured and maimed and all those who were ignored and brushed aside by the Administration. We have given a voice to every American who is horrified and disgusted that these terrorists have been granted life's most precious commodities -- freedom, liberty and independence. We took on this cause to try and prevent a travesty of justice from occurring and to avoid sending a signal of weakness to terrorists.

By reviewing a request for clemency reportedly outside of normal Justice Department guidelines, in granting clemency to dangerous terrorists and then to place seemingly lenient conditions on their release is to undermine United States policy and the very foundation upon which this great nation was built. To undermine that policy is to make the United States vulnerable to future terrorist attacks. That's not just my opinion, an overwhelming majority in the House and 95 Senators, Democrat and Republican consider "making concessions to terrorists is

deplorable and that President Clinton should not have granted clemency to the FALN terrorists."

One of the more egregious aspects of this clemency offer is that for years the victims of FALN violence have been trying to sit down with Department of Justice staff to present their side of the story. Some victims did not even get the courtesy of a phone call that the terrorists were going to be released. Meanwhile, advocates for the terrorists have had the opportunity to meet with Department of Justice officials. It would have been nice and appropriate and the right thing to do to extend the same level of courtesy to the victims. They are the individuals who have been suffering all these years.

Some now argue, let's get this clemency behind us. I say, not so fast. Someone at the Justice Department or White House owes these victims and the United States public an explanation why these terrorists were set free. In effect, victims have been told to live with it, that it's none of their business.

We have an obligation to demonstrate whether there is a new threat posed by these terrorists. It has been reported that Bureau of Prison tapes exist proving that the terrorists will engage in violence once they are released from prison. Is this the case? The FBI has threat assessments on various terrorist organizations, and should we now be concerned about the threat the FALN terrorists pose to our nation? Should law enforcement agencies which thought the FALN issue was put to bed now have to track these individuals, depleting valuable resources to combat crime and terrorism? And what are the conditions of their clemency? Are they allowed to meet with one another? Is the Administration willing to enforce the conditions of the clemency? Will the terrorists be sent back to prison if they violate the terms of the clemency?

We cannot turn back the clock and undue the damage that has been done. But we can -- and must -- investigate this matter deeper to learn why the President chose to ignore the unanimous recommendation of law enforcement agencies to keep these terrorists where they belong -- locked behind bars in federal prison. The 16 terrorists have demonstrated no contrition for their actions nor remorse for their reign of terror. They belong in prison, and they should serve every last day of their jail sentence. America must show no sympathy for those who commit acts of terrorism on our soil.

I don't want to see one more innocent American killed by this group.

Thank you. And now I would like to introduce some of the human faces affected by FALN violence and trust their experiences and views will demonstrate how grave an issue this truly is.

Mr. BURTON. Thank you, Mr. Fossella. If you would like, you can introduce Ms. Berger first and then we will go right down the line with the others.

Mr. FOSSELLA. Mr. Chairman, it's my honor to introduce Mrs. Diana Berger Ettenson, whose husband again suffered what is probably the most fearful thing any family can suffer. Her husband left work one morning, attended a lunch, and never returned. He was killed in the Fraunces Tavern bombing.

STATEMENTS OF DIANA BERGER ETTENSON; THOMAS CONNOR; DETECTIVE RICHARD PASTORELLA, RETIRED, NEW YORK CITY POLICE DEPARTMENT; AND DETECTIVE ANTHONY SENFT, RETIRED, NEW YORK CITY POLICE DEPARTMENT

Ms. ETTENSON. My name is Diana Berger Ettenson. On January 24, 1975, the FALN, a Puerto Rican terrorist group, placed a bomb in Fraunces Tavern, a historic site in New York City. That bomb exploded at the height of the lunch hour. Four people were killed and over 60 were injured in the blast. One of those killed was my husband, Alejandro, A-L-E-J-A-N-D-R-O, Alex Berger, who was attending a business lunch. I was 6 months pregnant at the time. Alex was an only child, whose parents had just moved to the United States to be close to us.

On the day of the bombing, I was driving to New York to meet Alex and his parents. I heard the news of the blast on my car radio. The news reported that a group known as the FALN had claimed responsibility for the bombing. I had never heard of this group before. However, this group has haunted me to this day. I had to tell Cecelia and Joseph Berger that their only child had been murdered. I do not think I have to tell you in detail what this act of terror did to my family and friends.

I want to make it perfectly clear that I am not here today for any political reasons. I am here to express my outrage over President Clinton's release of the FALN terrorists.

Let us make no mistake about the criminals who were released. Contrary to what their supporters and the White House have suggested, they were not in prison merely because of guilt by association. They were proud and fervent members of a group which sought independence for Puerto Rico by carrying on a reign of terror in the United States. The people that the President released were fully cognizant of all aspects of the FALN's goals and means of achieving them. They were convicted of crimes that helped facilitate the terror of the FALN and some were actually involved in bombmaking. They have never denied their participation and responsibility.

I refuse to be insulted by those who say that these people were never proven to have caused bodily harm. They were captured before more innocent lives were lost. Acts of random terrorism ceased after these people were imprisoned. The FALN, including those just released, were responsible for the killing and maiming of innocent people whom they conveniently describe as "victims of war." The prison sentences they received were commensurate with their deeds.

Mr. Chairman, I have heard that the terrorists have renounced violence. I have heard that we should have peace and reconciliation. What I have not heard, however, is one ounce of remorse from any of those released. They have no remorse. One terrorist even proudly proclaimed that he is not sorry for anything that he did in the past. Two members of the FALN refused to renounce violence and, fortunately, still remain in prison. Are these the people who deserve clemency from the President?

Upon their release, their supporters have hailed them as political prisoners and freedom fighters. Mr. Chairman, how do you think I and other victims feel when we have to listen to this?

Mr. Chairman, the victims of this outrageous act of clemency need the help of you and your committee, Democrats and Republicans. President Clinton must provide a comprehensive explanation for his actions and not merely say that it was the just thing to do and that they were punished enough. The victims continue to be punished each and every day.

Why was clemency granted to 16 violent criminals who show no remorse for their conduct when the President has utilized his extraordinary power on only three prior occasions, each involving minor infractions, despite over 3,000 requests? Where is the sense of proportion? What documents did the President analyze in making his decision? Why does the White House refuse to release these documents? What is being hidden?

Why was this decision made in the face of opposition from the FBI, the Bureau of Prisons and U.S. attorneys? Why was the Department of Justice silent on the matter? What was the role of Charles Ruff and what promises did he make? Why couldn't the White House notify the victims and their families?

It has recently come to my attention that the freed prisoners are reuniting with the consent of their probation officer. Has this consent been given, and if so, why?

The American people and the victims of FALN violence demand answers to these questions.

Mr. Chairman and committee members, thank you for your time and attention to this important matter.

[The prepared statement of Ms. Ettenson follows:]

COMMITTEE ON GOVERNMENT REFORM

September 21, 1999

My name is Diana Berger Ettenson.

On January 24, 1975, the FALN, a Puerto Rican terrorist group, placed a bomb in Fraunces Tavern, a historic site in New York City. That bomb exploded at the height of the lunch hour. Four people were killed and over 60 were injured in the blast. One of those killed was my husband, Alejandro (Alex) Berger, who was attending a business lunch. I was 6 months pregnant at the time. Alex was an only child, whose parents had just moved to the United States to be close to us.

On the day of the bombing, I was driving to New York to meet Alex and his parents. I heard the news of the blast on my car radio. The news reported that a group known as the FALN had claimed responsibility for the bombing. I had never heard of them before, however, this group has haunted me to this day. I had to tell Cecilia and Joseph Berger that their only child had been murdered. I do not think I have to tell you in detail what this act of terror did to my family and friends.

I want to make it perfectly clear that I am not here today for any political reasons. I am here to express my outrage over President Clinton's release of the FALN terrorists.

Let us make no mistake about the criminals who were released. Contrary to what their supporters and the White House have suggested, they were not in prison merely because of "guilt by association." They were proud and fervent members of a group which sought independence for Puerto Rico by carrying on a reign of terror in the United States. The people that the President released were fully cognizant of all aspects of the FALN's goals and means of achieving them. They were convicted of crimes that helped facilitate the terror of the FALN and some were actually

involved in bomb making. They have never denied their participation and responsibility. I refuse to be insulted by those who say that these people were "never proven to have caused bodily harm". They were captured before more innocent lives were lost. Acts of random terrorism ceased after these people were imprisoned. The FALN, including those just released, were responsible for the killing and maiming of innocent people who they conveniently describe as "victims of war". The prison sentences they received were commensurate with their deeds.

Mr. Chairman, I have heard that the terrorists have renounced violence. I have heard that we should have "peace and reconciliation". What I have not heard, however, is one ounce of remorse from any of those released. They have no remorse. Incredible. To the contrary, one terrorist, proudly proclaimed that he is not sorry for anything that he did in the past. Two members of the FALN refused to renounce violence and, fortunately, still remain in prison. Are these the people who deserve clemency from our President?

Upon their release, their supporters, have hailed them as political prisoners, and freedom fighters. Mr. Chairman, how do you think I and other victims feel when we have to listen to this?

Mr. Chairman, the victims of this outrageous act of clemency need the help of you and your committee. Democrats and Republicans. President Clinton **must** provide a comprehensive explanation for his actions, and not merely say that it was the "just" thing to do and that they were punished enough. The victims continue to be punished each and every day.

Why was clemency granted to 16 violent criminals, who show no remorse for their conduct, when the President has utilized this extraordinary power on **only** three prior occasions, each involving minor infractions, despite over 3000 requests? My God, Where is the sense of proportion?

What documents did the President analyze in making his decision? Why does the White House refuse to release these documents? What is being hidden? Why was this decision made in the face of opposition from the FBI, the Bureau of Prisons and United States Attorneys? Why was the Department of Justice silent on the matter? What was the role of Charles Ruff and what promises did he make? Why couldn't the White House notify the victims and their families?

I have asked the White House for copies of letters from those who petitioned for clemency. To date, I have not received them.

It has recently come to my attention that the freed prisoners are reuniting with the consent of their probation officer. Has this consent been given, and, if so, why?

The American people, and the victims of FALN violence demand answers to these questions.

Mr. Chairman, and committee members, thank you for your time and attention to this important matter.

Mr. BURTON. Thank you, Ms. Berger, for that very eloquent testimony.

Mr. Fossella.

Mr. FOSSELLA. Mr. Chairman, in 1975—I mentioned the Fraunces Tavern bombing—there were two boys home with their mother, Thomas Connor, who was 11, and his brother, Joseph, who were about to celebrate Joseph's 19th birthday when they got the call that their father would not be returning home. He was in the restaurant with Mrs. Berger's husband.

Mr. CONNOR. I'm Tom Connor. We all live in the United States, the greatest country on Earth, a Nation of laws. And we live in an age following the fall of communism when the country is at peace. It's a time when American-style democracy is flourishing across the world and our enemies are few. Therefore, right here and right now, Americans should feel as safe from the horrors of world war as we ever have in the past 100 years. Americans should be able to go about their daily lives feeling safe and secure. But we can't, and we can't because on the eve of the next century, the threat of global terrorism is greater than it has ever been.

In the United States, a country that has never really suffered from terrorism up until 25 years ago, that threat is tremendous. The World Trade Center bombing and the Oklahoma City catastrophe are just the latest examples, but more are sure to follow. And right now when the United States should be leading the world in fighting terrorism, the President decides to offer clemency to 16 members of one of the most violent organizations ever to wage war against the U.S. Government from within our own borders.

He claims these people are nonviolent, but three of them were arrested while building bombs and another eight were arrested in a van full of weapons on their way to commit armed robbery. Does that sound nonviolent to you?

After being captured, they spoke proudly of their actions and during their trials, they threatened the judge and prosecutors. Does that sound nonviolent to you?

There never was a pacifist wing of FALN and not one member has ever expressed remorse. The 14 who eventually accepted the President's offer took over 3 weeks to formally renounce violence. Do these sound like people who deserve clemency to you?

Their release was unanimously opposed by the FBI, the Bureau of Prisons, and the U.S. Attorneys office. They were taped in prison discussing a return to violence after their release. Again, do these sound like the people who deserve clemency to you?

The Founding Fathers gave the President the power to pardon, not subject to congressional approval. In the Federalist Papers, Alexander Hamilton stated that this power would not be abused lest the President be thought conniving. Mr. Hamilton obviously never envisioned President Clinton.

By offering this clemency, the President has endangered America. His action renders void the judgment of the juries and Federal judges who impose long prison sentences on these violent felons because they knew the facts and they understood the terrorists' motives. His explanation of why this action was taken is not only weak, but it insults the intelligence of the American people who obviously know it was done for political purposes. His action is an af-

front to me, to my family, and all those whose lives were forever harmed by the FALN's indiscriminate violence. Finally, he, perhaps in violation of the law, didn't even have the decency to inform the victims of these terrorists' release. We found out by reading about it in the newspaper.

But now they're free; they've been released onto our streets and into our cities. I pray that their violent ways have ended, but Americans should not have to be reliant upon my prayers. Terrorists of any nationality should never be granted clemency if this country is to be serious in their thoughts about opposing terrorism.

The next indiscriminate bombing in this country will probably not kill me or anyone else in my family, but it may harm someone that you all know or love. And whenever that happens and whoever is the bombmaker, I, unlike the President, will feel the pain of the victims, and he will be partially responsible for it.

I ask you to continue to investigate this clemency matter to determine why it was done over the objections of the Nation's leading law enforcement agencies, to ascertain how the process even began without the formal request of the terrorists themselves, to understand how it is that representatives of a terrorist group can be given time with Attorney General Janet Reno while the victims are ignored and slighted, in possible violation of the law.

Also, how is it that the President can write to Mr. Waxman, but not have the decency to address anyone sitting at this table? Gaining the answers to these questions cannot bring back my father or repair 24 years of pain, but it can help to keep other victims from having to suffer at the hands of terrorists, as mine has.

Thank you.

[The prepared statement of Mr. Connor follows:]

**HEARING STATEMENT OF THOMAS CONNOR
BEFORE THE GOVERNMENT REFORM COMMITTEE OF
THE U. S. HOUSE OF REPRESENTATIVES**

SEPTEMBER 16, 1999

My name is Tom Connor. I am a 35 year Wall Street banker. On January 24, 1975, my life was forever changed when my father, Frank, was killed by an FALN explosion while eating lunch at historic Fraunces Tavern in downtown New York. The FALN proudly claimed responsibility for that blast which killed three other people and injured many more.

We live in the United States, the greatest country on earth, a nation of immigrants, who – working together – have created a special place. We are the envy of the world.

We live in an age – following the fall of communism – when the country is at peace. It is a time when American-style democracy is flourishing and when our enemies are few. Those countries with whom we are not on good terms are generally small to mid-sized dictatorships who are but a nuisance to the democracies of the world.

Therefore, right here, right now, we are safer from the horrors of World War than at any time over the past one hundred years. Americans should be able to go about their everyday lives feeling safe and secure.

However we cannot. As we enter the next century the threat of global terrorism is greater than it has ever been. In the United States -- a country which was largely immune from such violence until 25 years ago -- the threat is tremendous. The World Trade Center bombing and the Oklahoma City catastrophe are just the **latest** examples, and this number is sure to grow.

And now -- when we should be leading the world in an all-out attack on terrorism -- the President releases 16 members of one of the most violent organizations ever to declare war on our government from within our own borders.

He claims these were "non-violent" members of the terrorist group, but three of them were arrested while building bombs. Another eight were arrested in the back of a van loaded with weapons to be used to commit armed robbery. Does this sound "non-violent" to you?

After being captured, they spoke proudly of their violent actions and during their trials they threatened judges and prosecutors. Does this sound "non-violent" to you?

There was no pacifist wing of the FALN and not one has ever expressed any remorse. The 12 who eventually accepted the President's offer took over three weeks to formally renounce violence. Does this sound like a group which has truly renounced violence to you?

Their release was unanimously opposed by the FBI, the Bureau of Prisons and several US Attorneys General offices. They were taped in prison discussing a return to violence and have continued to state their belief that what they did was right. Does this sound like a group which has truly

renounced violence to you?

The founding fathers gave the President the power to pardon, not subject to Congressional approval. In the Federalist Papers (No. 74), Alexander Hamilton stated this power would not be abused lest the President be thought "conniving." Mr. Hamilton obviously never envisioned Mr. Clinton.

By offering this clemency, the president has endangered America. His action renders void the judgment of the juries and federal judges who imposed long prison sentences on these violent felons because they knew the facts and understood the terrorists' motives. His explanation of why this action was taken is not only weak, but insults the intelligence of the American people who obviously know that it was done for political purposes. His action is an affront to me, my family, and all those people whose lives were forever harmed by the FALN's indiscriminate violence. Finally, he – perhaps in violation of the law – didn't have the decency to inform the victims of these terrorists release.

Under the Victim's Rights and Restitution Act of 1990, a "responsible official" was to provide victims with the earliest possible notice of the release from custody of the offender. The law reads at 42 U.S.C. Section 10607(c)(5): "After trial a responsible official shall provide a victim the earliest possible notice of . . . release from custody of the offender." My family found out by reading the newspapers!

We were never contacted by Janet Reno or anyone at the Justice Department or anyone at the White House regarding our views on clemency. Had we been properly notified, we would have requested the delivery of our opinion on the issue through a personal meeting with the Attorney General, as the pro-clemency supporters were granted. If Ms. Reno had been fully informed, there is a chance, however small, that she would have vehemently objected to the clemency offer in advance of the President's formal offer. Because no notice was given, had the terrorists renounced violence and accepted clemency right away, they may actually have been out of jail before we ever learned of the offer.

But now they are free -- released onto our streets, into our cities. I pray their violent ways have ended, but Americans should not have to be reliant upon my prayers. Terrorists of any nationality should never be granted clemency if this country is ever to be thought serious about opposing terrorism.

The next indiscriminate bombing probably will not kill anyone in my family, but it may kill somebody who you know or love. And wherever it happens and whoever is responsible, *I*, unlike the president, will feel their pain, and *he* will be somewhat responsible for it.

So, in closing, I ask you to investigate this clemency offer. To determine why it was done over the objections of the nation's leading law enforcement agencies? To ascertain how the process even began without a formal request from the terrorists themselves? To understand how it is that the representative of terrorists are given time with Attorney General Janet Reno while the victims are ignored and slighted in violation of the law? Gaining answers to these questions can not bring back

my father or repair 24 years of pain, but perhaps it can help to keep other families from having to suffer at the hands of terrorists, as mine has.

Finally, I am attaching a copy of the statement of my brother, Joe Connor, which he presented to the Senate Subcommittee on the Western Hemisphere, Peace Corps, Narcotics and Terrorism of the Committee on Foreign Relations at a hearing on September 14, 1999.

Respectfully submitted,

Thomas Connor
September 16, 1999

**HEARING STATEMENT OF JOSEPH CONNOR
BEFORE THE SUBCOMMITTEE ON THE WESTERN HEMISPHERE, PEACE
CORPS, NARCOTICS AND TERRORISM OF THE
COMMITTEE ON FOREIGN RELATIONS**

SEPTEMBER 14, 1999

My name is Joseph Connor and I appear before the Committee as a person forever affected by an FALN terrorist act that killed my father, Frank Connor, at Fraunces Tavern 24 years ago and by the recent unconscionable and immoral decision by the President to grant clemency to 16 FALN terrorists.

For the reasons I will explain, I request that the Committee formally investigate the following aspects of President Clinton's clemency grant to the FALN terrorists:

- Why the President disregarded the recommendations by the FBI, Justice Department and Bureau of Prisons that the terrorists not be released?
- Why the victims and their families were neither given proper notification of the clemency nor a meeting with Janet Reno, as pro clemency supporters were granted?
- The impact of granting of clemency to the FALN terrorists will have on future terrorist acts and whether the possible clemency request by William Morales should be granted?
- Why the President initiated the clemency process without a formal request from the terrorists themselves?
- Whether Hillary Rodham Clinton's political aspirations in New York State played a role in the clemency grant?

Contrary to the disingenuous claims of those who sought the terrorists' release, there is nothing non-violent about these FALN members and there has been no remorse. Four of them were videotaped making bombs just prior to their arrests. Just this past weekend, one of the now released terrorists explained there is no need for him to feel guilt for the Fraunces bombing. Incredibly and shamelessly, he argued that the establishment where people were killed did not take proper precautions to guard against such an attack. My father was killed while eating lunch in a restaurant! These are the people our President has released on society.

The bombings only stopped when these terrorists were put in jail!

The FALN killed real people and devastated the lives of many others. Our family has had to live with the aftermath of their "non-violence" for almost 25 years. It was a beautiful winter's day, Friday, January 24, 1975, when my family was shattered by the bombing of Fraunces Tavern in New York City. My father, Frank Connor, was brutally murdered in the attack; an attack for which the FALN proudly claimed responsibility. Our mother, Mary, had spent much of the day preparing a special meal which we planned to have that night to celebrate my brother's and my recent 11th and 9th birthdays, respectively. (Mourners ate that meal after my dad's funeral.) Shortly after coming home from school that day, we learned that our father had been with clients at Fraunces for lunch. After an agonizing vigil, his colleagues at Morgan Guaranty Bank delivered the final, devastating news to my mother, brother, grandmother and me.

My father was only 33 years old when he was killed. The only child of an elevator operator and a cleaning lady, he was born and raised in Washington Heights, a working-class section of Manhattan,

attended City College (where, ironically several of the FALN terrorists also "studied"), graduated from Farleigh Dickinson University, and worked his way from the ground floor up to a successful career at Morgan. Now at 95 years of age, my grandmother, like the rest of my family, has never recovered from his death. Although my mother has remarried and my brother Tom and I now have families of our own, not a day passes without feeling the void left in our lives. We miss him deeply. My father's death has become a part of me; an indescribable, intangible wound that has been opened and aggravated by this preposterous and disrespectful clemency grant.

These terrorists took away my father's life; never allowing him to see his sons play sports in high school, never allowing him the pride in seeing his boys graduate college, and get married. They took from him the joy of being a grandfather. They took from my mother the promise of growing old with her first love.

His grandchildren will never know their grandfather. They look at pictures and ask who he is. My wife and I tell them he is in Heaven watching over us. But, when they ask why he was killed, what answer can we give? His life been valued lower than the political agenda of the President of the United States. My father loved his country and in whose greatness he believed. Is this what he gets in return?

Not only was this grant of clemency immoral, but it violated several legal conventions. Under the Victim's Rights and Restitution Act of 1990, a "responsible official" was to provide victims with the earliest possible notice of the release from custody of the offender. The law reads at 42 U.S.C. Section 10607(c)(5): "After trial a responsible official shall provide a victim the earliest possible

notice of . . . release from custody of the offender." My family read about the grant in the newspaper! We have never been contacted by Janet Reno or anyone at the Justice Department or the White House regarding our views on the clemency. Had we been properly notified, we would have requested the delivery of our opinion on the issue through a personal meeting with Janet Reno, as the pro clemency supporters were granted. God willing, if Ms. Reno had been fully informed, there is a chance, however small, given her own political nature, that she would have vehemently objected to the clemency offer from ever having being made by the President. Because no notice had been provided by the Clinton Administration, had the terrorists renounced violence and accepted clemency right away, they may actually have been out of jail before we ever learned of the offer.

The process through which this clemency was offered was improper. Typically, those incarcerated express remorse and request clemency from the President through a standard process. He then reviews the claims. In 3,039 out of 3,042 prior cases, clemency was denied by the Clinton Administration. In this case, the terrorists did not express remorse or actually request clemency. It was petitioned on their behalf in 1993, and the request sat on the President's desk for 6 years. Was it a coincidence that when Mrs. Hillary Rodham Clinton decided to run for the Senate in New York State, the President suddenly, and without notice, took an interest in the clemency request and then granted it? Perhaps most telling, the clemency request was granted before the FALN terrorists themselves ever made their own request.

Much has been written about the support given to the clemency request by luminaries such as Cardinal O'Connor, Desmond Tutu and Jimmy Carter. This is clearly part of a disinformation campaign. Cardinal O'Connor never supported clemency, but merely asked the Attorney General

to review the case — a large difference. (I am attaching a letter from Cardinal O'Connor to me explaining this.) These lies have been proliferated by White House spokesmen since clemency was offered.

Has anyone heard or read the opinions of Desmond Tutu or Jimmy Carter? Even if they had supported clemency, on what factual and legal basis did they do so? And, what is the value of their supposed opinions on this matter in any event, given that clemency was opposed by the FBI, the Bureau of Prisons, and the U.S. Attorney's Office. History teaches us from the Iran hostage crisis that Jimmy Carter, whatever his virtues, is hardly an expert on how to deal with terrorists. In fact, Bureau of Prisons officials concluded that, if released, these terrorists might resume their criminal behavior.

As recently as last year, the Criminal Division of the Department of Justice wrote to our family, describing the arrests and convictions of these people, referring to them in the Government's own reports as "terrorists." Perhaps the President should read this letter, which I am also attaching to this written hearing statement.

Terrorism is one of the major problems facing the world as we enter the new century. While terrorism continues on from many foreign and domestic sources, the nation thought that the threat from FALN terrorists had been at least eradicated almost 20 years ago. Thanks to the President's callous disregard, the threat is now back and the world is a less safe place as a result. I keep hearing the President repeating that we have to protect our children. Is unleashing unrepenting, hardened killers on society the way to do so? It shouldn't "Take A Village" to see that trampling on the rights

of victims, and ignoring proven prevention techniques in our criminal justice system for considering and denying clemency applications, is not the way to fight terrorism.

Respectfully submitted,

Joseph Connor



OFFICE OF THE CARDINAL
1011 FIRST AVENUE
NEW YORK, NY 10022-4134

April 13, 1998

Dear Joseph,

I received your letter concerning my support for a review of the cases of 15 Puerto Rican federal prisoners. I understand your opposition given the terrible tragedy that your family experienced in the loss of your father. I believe that this kind of terrorist action must be condemned. I am sorry for what you have suffered.

My request to Attorney General, Janet Reno was for a review of these cases. I believe that there are many factors which must be considered, including the renunciation of violence as a means of achieving political ends, as I stated in my letter. I also believe, with you, that an expression of remorse for these crimes, should also be considered in determining humanitarian release.

I appreciate your sharing your views with me.

Faithfully in Christ,

A handwritten signature in dark ink, appearing to read "John Cardinal O'Connor".

Archbishop of New York

Mr. Joseph Connor

A black rectangular redaction box covering the address of Mr. Joseph Connor.



Criminal Division

Washington, D.C. 20530

JAN 8 1998

Mr. Joseph F. Connor
[REDACTED]

Dear Mr. Connor:

Your letter to Attorney General Janet Reno, in which you request a greater recognition on the part of the U.S. government of the terrorist crimes perpetrated by the FALN in the 1970's, has been forwarded to the Criminal Division for response. We apologize for our delay in responding.

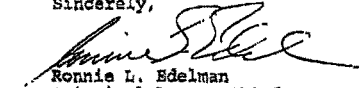
In your letter, you express your desire that the crimes committed by William Morales, the alleged leader of the FALN presently residing in Cuba, and by other members of the FALN be publicly condemned by the U.S. Government as crimes of terrorism. William Morales was sentenced in New York to a 29- to 69-year prison term on state charges and up to 10 years in prison on federal charges. However, after escaping from a New York hospital in 1979, he made his way to Mexico. In 1983, he was convicted in Mexico for the killing of a police officer and sentenced to eight years in prison. Mexican authorities released Morales from prison after he had served five years, rejecting a long-pending U.S. extradition request on grounds that Morales was a "political fighter for the independence of Puerto Rico." The United States expressed its disagreement with this decision, stating that the U.S. government was "deeply disturbed that an individual with Morales' record of criminal behavior... [w]ould even be considered for possible political refugee status." Since 1988, the Government of Cuba has apparently provided safe harbor for Morales.

In addition, numerous members of the FALN were arrested in 1980 for their involvement in 28 bombings aimed at gaining independence for Puerto Rico. They were convicted in 1981 on thirteen counts that included seditious conspiracy, auto theft, illegal use of weapons, and plotting to kidnap. Three other FALN terrorists were arrested in 1983 for attempting to bomb U.S. military installations, for auto theft, and for attempted armed robbery. An additional two terrorists were arrested in 1986 on charges of robbery. Thus, in the case of the crimes perpetrated by the FALN, including the 1975 Frances Tavern bombing, the United States has pursued its policy of vigorously investigating and prosecuting those acts of terrorism which significantly

impact on U.S. interests. In accord with this policy, the Federal Bureau of Investigation remains committed in its investigative efforts to apprehend William Morales. It is our hope that by aggressively pursuing and prosecuting terrorists, we will deter others who might contemplate committing such crimes.

We extend to you and your family our condolences on the loss of your father, Frank T. Connor, in 1975. We thank you for sharing your concerns with us and hope that this matter may one day be resolved.

Sincerely,



Ronnie L. Edelman
Principal Deputy Chief
Terrorism and Violent Crime Section

Mr. FOSSELLA. Mr. Chairman.

Mr. BURTON. Mr. Fossella.

Mr. FOSSELLA. I just want to reference the letter addressed to Congressman Waxman.

One paragraph says that President Carter's support was particularly noteworthy because he commuted to time served the sentences of Puerto Rican nationalists who were convicted for the 1954 attack. Several years later, another group of Puerto Rican nationalists blew up buildings in downtown Manhattan, and two of the victims are here today.

Detective Richard Pastorella, who was responding to a bomb threat December 31, 1982.

Mr. BURTON. Mr. Pastorella.

Mr. PASTORELLA. Mr. Chairman, distinguished members of the committee, I am Detective Richard Pastorella, retired, from the New York City Police Department bomb squad. I do not have a prepared speech for you this morning; I speak only from my heart.

I also take issue with the President's decision to grant clemency to this terrorist organization and group. Each of these people, when they joined the FALN, knew full well what the manifesto of that organization was, namely, the violent overthrow of the American Government.

These terrorists claim that they speak for the Puerto Rican people; I say here and now, they do not. My argument is not with the Puerto Rican people as a whole. They are fine, decent, law-abiding people that have contributed to the fabric of this Nation and made it and continue to make it the great Nation that it is today. I take issue also when I hear that Coretta Scott King, Bishop Tutu and others have asked for the release of this terrible group of people. I take issue because I'm not certain exactly what their comments and statements were.

Not very long ago I was told that Cardinal O'Connor of the Archdiocese of New York City also asked for the unconditional release of these terrorists. That was not true and is not true. Cardinal O'Connor has just in the past few days renounced that statement and said that he had only asked for a review of their release.

I remind Bishop Tutu that not very long ago on his shores in Kenya and Nairobi, the American embassies that were blown up by other terrorists where 12 American lives were lost and hundreds of African nationals sacrificed their lives. Are they to be forgotten?

I decided to come here this morning to speak to this committee and to you, Mr. Chairman, to give a human face to what terrorism truly is. Who, I ask you, is going to commute my sentence? My body has healed, but my emotions will never heal. I bear this cross for 17 years, and I will never be free of it. My daughter-in-law is Puerto Rican. I have two granddaughters that have Puerto Rican heritage, and I am proud of them, but I have never seen them. Please excuse me.

When my granddaughters present me with crayon drawings and are pleased to show them to me, I have to pretend that I can see them and enjoy their effort. When they ask me to go outside and play ball with them, I cannot. I don't have the fingers to hold the ball. I can't even see it coming. I have sacrificed my pride, my dig-

nity, and will never be free. Yet these terrorists are free to roam our streets here in America.

I've been told also that they have served an inordinate number of years behind bars unjustly. Congressman Fossella, Mrs. Berger, Tom Connor have mentioned Terry Nichols. He wasn't there at the bombing in Oklahoma City at the Alfred P. Murrah Building, but he was complicit. He did plan that destruction. He did assist in the manufacture of that weapon.

Let us take this a step further to total absurdity. Should we consider the freedom of Charles Manson? He's been in prison for 28 years and is now over 64 years old. He wasn't there at the time when the LoBiancos were stabbed to death or when Sharon Tate was killed. Should we consider his freedom, his human rights? What of our human rights?

We here today speak for those that have been killed and injured in the past, who cannot speak for themselves. Have we forgotten the 168 lives lost in Oklahoma City—men, women, and innocent children? I ask those of you here present in this committee and in this room to look at us carefully. You should be seeing the mirror image of members of your own families. I wonder—I wonder how readily would you step forward to defend this President and his hypocrisy if your family members were seated at this table, if your grandchildren were blinded and had their limbs blown from their bodies. I wonder, Mr. Waxman, if you'd be there to defend the President and his choice of clemency. You should be ashamed of yourselves.

If I have made you uncomfortable this morning, so be it. You should be uncomfortable. I will never be free. My partner and his family will never be free. Rocco Pastorella and his family will never be free till our Heavenly Father takes us home; then and only then will we be free.

Don't let our suffering and pain be for naught. Don't let the lives sacrificed at Oklahoma City and the World Trade Center in New York be forgotten. Why were those lives sacrificed? To what purpose? For a headline? To bring notice to a political cause? Have any of those lives sacrificed and maimed furthered any of those causes one iota, one inch? No, not at all, and yet we continue to suffer daily. Who thinks of us, who here remembers? Very few. Certainly not Mr. Clinton.

What part did Charlie Ruff play in this? I wonder. Was this a quid pro quo for his legal services in defending the President with the Monica Lewinsky debacle where America yawned, where everyone just nudged—nudged, wink, wink, say no more?

Well, this is a totally different issue. This is where American lives and American blood has been shed here on our shores. I urge every one of you, I urge you, Mr. Chairman, don't let us down. Investigate this to the full. What is William Jefferson Clinton hiding and why?

I thank you, each and every one. My apologies if I have made you uncomfortable, but I have to make my point the only way I can. I am privileged to speak here to exercise my right under the first amendment. The members of the FALN had that very same right and I don't disagree with that as long as it doesn't impinge on the rights and safety of others. Why, why have they chosen the

bomb and the bullet when they had the civilized choice and more traditional choice of the power of the pen.

Here, here in this wonderful government of ours we exercise freedoms daily. We live in safety, yet we take that safety in total complacency. No, there is a true danger lurking very close to us all every minute of every day, and when the next terrorist act occurs here at home upon us, Mr. Clinton will have to assume some of that responsibility because he has now set a new judicial standard. We can negotiate with terrorists even though he stands up before the American public and says we will never do so, we will pursue them to the ends of the Earth.

Our Secretary of State, Madeleine Albright, says we will never forget the people who have lost their lives in Africa and in our embassies throughout the world. Innocent children killed and maimed on buses that were going by the building had nothing to do with any political statement, yet their lives were drawn into it as ours have been and to what purpose? For a 1-day headline in the paper?

Is that all our lives mean? Are we expendable? I leave these questions for you to have answered. We have voted you into office to speak for us. Please do so.

Mr. BURTON. Thank you, Mr. Pastorella. That was a very eloquent statement. We appreciate the heartache you have had to endure.

Mr. Fossella.

Mr. FOSSELLA. Thank you, Mr. Chairman. His partner that night, responding to a bomb threat, upon which they found Rocco Pascarella, who had lost his leg.

It's my pleasure to introduce Detective Anthony Senft.

Mr. SENFT. I wanted to address this directly to Mr. Waxman. I just want to make a brief statement and read my formal statement as quickly as I possibly can. But please bear with me because I have one eye, but it's becoming more and more impaired as I get older.

Contrary to his statement, Mr. Clinton's letter, both sides were not heard. Since 1997, my wife and I have been writing letters to our President. We've written four letters and one to Janet Reno. We have never received a response. I was on a talk show about 3 weeks ago with an activist called—her name is Alice Cordova. We got into the elevator. She is a very articulate lady. Like Rich's daughter-in-law, my daughter-in-law is also Puerto Rican. I have a proud grandson and my son's in-laws live in Puerto Rico and have no recollection of what the FALN is doing in the United States or in their country.

When I got into this elevator and I spoke to this articulate lady, she told me she had a sit-down interview with Mrs. Reno, and I cannot get a letter answered by sending one to her and four to my President. I am disgusted over that. I'm appalled as I think back; I still think it's America, and I still think that someone should have sent me some kind of correspondence.

Members of the House, good afternoon. My name is Detective Anthony Senft, and I thank you for letting me address you today. I stand before you today not only as an American citizen, but also as a victim of terrorism, like my partner, a victim at the hands of the FALN. On December 31, 1982, while working for the New York

City Police Department as a detective on the bomb squad, I was severely injured by one of five bombs placed by the FALN while my partner and I attempted to render it safe.

On that day I received a lifelong sentence without the opportunity for parole, time off for good behavior, and no chance of clemency. My sentence includes five reconstructive operations on my face, the loss of my right eye—my left eye is deteriorating as we speak—and a 60 percent hearing loss in both ears, a fractured hip, severe vertigo, and the hell of a post-traumatic stress disorder. My only solace was the fact that 16 members of the FALN were serving prison sentences for crimes committed against American citizens.

Now, 16 years later, American citizens and I are victims, once again, as the result of the terrorist acts of the FALN and the pandering of our President.

President Clinton by his clemency decision makes a mockery of our Nation's policy of zero tolerance for terrorism. He speaks out of both sides of his mouth as he denounces terrorist McVeigh for his terrorist acts in Oklahoma and says publicly immediately following the horrible terrorist act against children in the Jewish Community Center in L.A. that America will not accept terrorism. Yet he released 16 convicted terrorists on that same day.

Was it because of political pressure from special interest groups? We don't know.

Clinton's actions tell would-be terrorists around the world that terrorism against the United States and its people is an acceptable form of demonstrating their political ideology. Terrorists need not fear the wrath of the American justice system any longer, for all they need do after destroying American property and lives is give a halfhearted, almost forced, apology and all will be forgiven.

Congressmen, all is not forgiven. Terrorism against the United States can never be an acceptable form of political protest. President Clinton, by his clemency offer, released 16 terrorists back onto the streets of America to commit more acts of terrorism against our families, your children, and my children. Some of the released, convicted terrorists are the same people who, while doctors worked feverishly to save my life and while family members rushed to my bedside, went to the radio and called the stations to claim responsibility for all five bombs. This same terrorist group has proudly taken responsibility for over 130 bombs in the United States and has killed 6 innocent people, as you previously heard, and maimed over 100 innocent victims; and now, again, they have put fear into America across this country.

If this band of violent terrorists was so remorseful for their horrific acts, then why did it take 3½ weeks for them to agree not to—to admit any acts of terrorism on American soil and sign a statement attesting to that? And how do we trust convicted terrorists at this point?

This committee must ask itself why the President would grant this clemency against the advice of law enforcement organizations whose job it is to give recommendations on the appropriateness of this clemency. Was it to gain favor for the Puerto Rican vote in New York for Mrs. Clinton's senatorial bid? Or was it simply another example of President Clinton's lack of moral character?

What I'm concerned about is William Morales, the FALN self-professed leader and convicted terrorist, seeking amnesty from our President. We must take a strong stand and affirmative stand against any amnesty for William Morales. Our duty as police officers and elected officials is to protect our fellow citizens against terrorists like Morales and the 16 terrorists granted clemency. I have done my best to protect the lives of my fellow New Yorkers and I have paid the price for that with no regrets.

Now I ask that the Members of the House take a stand and enforce our Nation's policy of zero tolerance for terrorists. Our President has chosen to ignore that policy and the recommendations of the bureaus that oversee clemency requests. It is time for our Senate and our country to protect American citizens against terrorists and to punish those convicted of terrorizing our families and our Nation.

Congressmen, I thank you this afternoon and I just want to say God bless America.

[The prepared statement of Mr. Senft follows:]

September 16, 1999

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solace was the fact that 16 members of the FALN were serving prison sentences for crimes committed against American citizens. Now, sixteen years later American citizens and I are victims, once again, as a result of the terrorist acts of the FALN and the pandering of our President.

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If this band of violent terrorists was so remorseful for their horrific acts, then why did it

take over three and one half weeks for them to agree not to commit any acts of terrorism on American soil and sign a statement attesting to that. And now do we trust the word of these convicted terrorist?

This committee must ask itself why the President would grant this clemency against the advice of law enforcement organizations whose job is to review and give a recommendation on the appropriateness of the clemency. Was it to gain favor of the Puerto Rican vote in New York City for Hillary Clinton's senatorial bid? Or

was it simply another example of President Clinton's lack of moral character?

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Congressmen Thank you for your time. GOD

BLESS AMERICA

Mr. BURTON. Thank you.

I think now we will go to questioning. I will reserve my questions until later.

Mr. Barr, would you like to start the questioning off?

Mr. BARR. I don't have any questions, Mr. Chairman.

I was very moved by both the eloquence and the heartfelt sincerity of the witnesses today. I appreciate their service to this country, their courage in coming forward and a special thanks to our colleague, Mr. Fossella, for his tireless efforts on this matter.

You serve your constituents and this entire country with tremendous pride, Mr. Fossella. Thank you.

Mr. BURTON. Mr. Waxman, do you have any comments or questions?

Mr. WAXMAN. I'll reserve my time.

Mr. BURTON. Mr. Davis.

Mr. DAVIS. No questions.

Mr. BURTON. Mrs. Morella, do you have any questions or comments?

Mrs. MORELLA. I certainly want to offer my condolences and my prayers, my feeling for your courageous acts of patriotism and what you have been through, the anguish to your families.

I don't really have any questions, but I wondered, did the White House inform you of the clemency that was being offered by President Clinton?

Mr. SENFT. No, ma'am.

Mrs. MORELLA. You found out about it when you read it in the paper?

Ms. ETTENSON. I'd like to say, I have tried to keep in touch with the New York Police Department for the past 24½ years to find out if there had been any changes in the case regarding Fraunces Tavern. I was always told that it was in an inactive file, so you can imagine my shock upon receiving a phone call on Monday, August 23, to be told about an article in the newspaper which was an interview in the New York Times of Joe and Tom Connor, who had heard about the clemency or had seen it in the paper.

I had been on vacation August 11 or 12 when it was, I guess, slid through the papers. I was totally unaware that anyone connected with the FALN had ever been arrested.

Mrs. MORELLA. Did the rest of you have the same kind of experience?

Mr. CONNOR. I was well aware that there were several of them in jail and under long prison terms. But last year on the 100th anniversary of Puerto Rico becoming a U.S. territory, there was some discussion of this clemency becoming—it became popular in Puerto Rico to discuss it as a gesture. But when it didn't happen last year, we figured then that was the end of it. So my family was shocked to read in the newspaper on the 11th, or I suppose the 12th, that the 16 had been offered the clemency.

Mr. SENFT. My position is, I just don't understand why I can't get my White House and my Attorney General to answer any letters—I've—I started this campaign in 1997 with my wife, and they refuse to respond to it—when the activists can get a sit-down meeting with Janet Reno.

Mr. FOSSELLA. If I may, Congresswoman Morella, as I mentioned, the testimony, I think reinforced by folks here, is that some of the advocates for the release of these terrorists have been meeting regularly with—I'm not sure about the Attorney General herself, but I know at least the Deputy Attorney General, and also with Mr. Quinn, who is the former White House counsel. So advocates have had the opportunity over the last several years to meet, I guess at a minimum, twice, and who knows how many; and I know what I'm saying is, these people have been asking for the same level of courtesy without even a phone call or a letter back.

Mrs. MORELLA. I want to thank you for appearing before us. I'm saddened at what you have experienced. I thank you for it, for your courage. I'm sorry you have to go through it again at this particular time.

And thank you, Congressman Fossella, for being there and following so closely and for being close to these poor people who have been victimized.

Thank you, Mr. Chairman. I yield back.

Mr. BURTON. Thank you, Mrs. Morella.

Mr. Waxman.

Mr. WAXMAN. Thank you, Mr. Chairman.

I want to thank each and every one of you for being here today, and I wish you'd had an opportunity to say what you said to us today to the President. But I've always strongly felt, and I understood the law was, that before a parole board would parole anybody from prison that the victims had a right to come in and testify.

I don't know why—and I asked my staff, and they don't know the answer to this—why—after the President made his decision to reduce the sentence, why the parole board didn't ask you to come in and have a hearing on the matter. I think you've gone through—all of you, through a great deal. Even to testify here today had to be a hardship. You were scheduled last Thursday; we were called off because of the hurricane. I think all of you testified in the Senate.

By what you said today and the intensity of the feelings that you have about this matter—I am moved by your intensity. And I don't know all the arguments that the President had heard, and he has not shared them all with us, but he indicated to us today in this long letter, which I read, his thinking about the matter; and I was struck by the argument that this action would be a sign to the world of a humanitarian gesture. And I was so offended.

This was something that he said former President Jimmy Carter suggested.

I remember the days when I went to the Soviet Union to plead for prisoners of conscience, and the Soviets would come back and use these people from the FALN as political prisoners. Each one of these individuals was convicted of serious crimes. They were not political prisoners, even though they thought they could break the law for their political point of view.

Mr. Pastorella was very eloquent in saying we have an amendment to the Constitution that gives people the right to petition their citizens and their government if they want to change things, and we also heard from the delegate of Puerto Rico that their views

are not the majority views of their fellow Puerto Ricans for independence.

In my mind they are in no way political prisoners. They shouldn't have been thought of as political prisoners. They were terrorists and criminals and convicted of it and sentenced to prison appropriately.

The question the President had to decide was, on each individual case, whether he would commute or lessen the severity of the sentence for whatever reasons; and he argued that the sentencing guidelines wouldn't provide for the length of time that they were given consecutively to serve.

That decision and any decision about a person has to be on an individual basis. Does the punishment fit the crime for that individual? If we are talking about if people who participated in the FALN and engaged in terrorist activities should be treated alike, well, if they are going to be treated alike they definitely should be locked up and kept locked up. There should be no negotiations with terrorists, and it galls me when they are talked about as political prisoners or anything in that general category.

I was as appalled when I heard about the negotiation that we had with the Iranians by the Reagan White House where we exchanged weapons for hostages, and I had serious misgivings when I heard about the negotiations where members of the so-called Palestinian Liberation Organization were supposed to be freed as political prisoners when many of them participated in killings. And I am moved when I hear Mr. Fossella and others say are we going to look back in a couple of years and say the people from Oklahoma ought to be looked at with the idea of giving them clemency. I don't care who in the world might want to say that the people who bombed Oklahoma City may be viewed as political terrorists—they were murderers. So I do not think that we ought to view it in that general way.

What the President said he did was look at each case and make his decision. I don't know that I would have come up with the decision that he made. I probably would not have. But I did not get the benefit of all that he heard.

And I was pleased in his letter that he made it very clear that many who supported unconditional clemency argued that they were political prisoners who acted out of sincere political beliefs and he rejected that argument. That argument should clearly be rejected and should never be given legitimacy as far as I'm concerned.

I just wanted to say these few words. I don't have any questions to ask of any of you. There is nothing that I can ask you that you haven't said, and you said it very movingly, and I thank you for being here. The President's decision was, as he said, on each one individually. Whether he is right or wrong, we will have to try to get as much information as we can to make a judgment. So far, the judgment of my colleagues in the Congress is that he is wrong and that his actions have been condemned.

Thank you, Mr. Chairman.

Mr. BURTON. Thank you, Mr. Waxman.

Mr. Horn.

Mr. HORN. Thank you, Mr. Chairman.

Each of you has made a very eloquent statement, and I think all of us are moved by that. And I have often been moved when the victims come out because, unfortunately, in our system we do not yet have a requirement that, before people are sentenced, the victims and their representatives—because usually they are dead—the victims should have a right to say something. And you have said it, and you have said it well.

One of you said hypocrisy. Others said questions need to be asked. You are absolutely correct on both counts, and the reason we have several committees looking at this is because we never easily get an answer to a question, just a simple question. And the only way you get it on Capitol Hill today is to issue subpoenas and, if they continue to act in contempt of Congress, to make a contempt of Congress citation.

Now, some day it will all come out. Somebody on their deathbed or something maybe will want to clean their conscience on this and say, I said to the President this, this, and this. But at this point that is what we have gone through for 6 solid years, is not getting the answers to the questions that have been asked, ought to be asked, and should be asked.

I thank you, Mr. Chairman. I assume we will do the asking.

Mr. BURTON. Thank you, Mr. Horn.

Mr. Towns, do you have any questions or comments?

Mr. TOWNS. No, I don't have any questions, Mr. Chairman, but I would like to make a statement.

The clemency offers were conditioned on each individual's agreement to renounce violence and to accept restrictions of their constitutionally guaranteed rights of travel and association. International human rights groups, church groups have called these 16 people political prisoners and have questioned America's commitment to human rights. Human rights groups argue that these 16 individuals received oppressively long prison sentences because of their association with radical groups.

I would like to remind everyone here today that rights of association is protected by the first amendment of the Constitution. The President has stated that his decision was based on a lengthy and intense lobbying campaign by human rights activists, prominent civil rights leaders and churches and even Members of the U.S. Congress. It would seem to me that would be the end of it. The grant of clemency and pardon are solely and uniquely within the privilege of the President. The Constitution does not require or even suggest mildly that he should consult with Members of this body or anyone in his deliberations on clemency and pardon petitions.

I understand that, in 1974, this committee held a hearing to examine President Ford's decision to pardon Richard Nixon. I believe that was a legitimate oversight exercise because Ford, after all, was appointed by Nixon and then pardoned Nixon from all future criminal penalties. It looked like a fix was in, and the executive branch had worked to undermine legitimate congressional actions. Nothing like that has happened here.

In addition to Ford's pardon of Nixon, there are a few other instances of pardons which, if we are going to be in this examining business, that we should examine. For instance, we should examine

George Bush's pardon of Armand Hammer for breaking campaign finance laws. We should examine Bush's pardon of several people who lied to Congress in connection with the Iran-Contra scandal. We should examine Bush's pardon of dope smugglers. Or we could just move on and hold hearings on the real concerns of the average American person.

I suggest that we conduct oversight of the government's programs and services that have a real effect on the lives of average Americans. Topics like the minimum wage, the Federal response to the flooding in the wake of Hurricane Floyd, the racially motivated hate crimes that are going on all over this country, or the epidemic of school shootings. These are all topics within this committee's jurisdiction which we have never had a full committee hearing about.

So, Mr. Chairman, please, please, return to the serious business of this country and the things that we really should be about, rather than sort of meddling in something that we really have no jurisdiction over whatsoever. And on that note, I yield back the balance of my time.

Mr. BURTON. Mr. Ose.

Mr. OSE. I yield 2 minutes to the gentleman from New York, Mr. Fossella.

Mr. FOSSELLA. I thank the gentleman.

I just want to clear the record briefly. It has been argued that a lot of people support clemency. Cardinal O'Connor had to go to the extreme step of actually publishing in a weekly newsletter that he publishes that he did not request clemency. He merely asked for it to be reviewed.

And I have a letter here signed by, I believe, Bishop Tutu or someone on his behalf where he writes: Dear Mr. President, I have received an appeal from the bishop of Puerto Rico for assistance in obtaining the release of 15 Puerto Rican prisoners presently held in San Francisco. The bishop believes that these people have been wrongly imprisoned and appeals to your office for their release on humanitarian means. My first letter of appeal was directed to the United States Ambassador here. Now I appeal to your office on behalf of my brother bishop to consider clemency for these prisoners.

It doesn't seem like there is an outright support for clemency, according to Bishop Tutu. But in response to Mr. Towns's comments about the right to associate, you already understand the rights that have been deprived to each of these individuals as well as others who have been killed and maimed. But it is clear by the sentencing guidelines Code of Federal Regulations Title 28, Judicial Administration Chapter 1, Department of Justice, that the parolee shall not associate with persons who have a criminal record unless he has permission of his probation officer.

So it is not out of the ordinary that these folks should be denied the opportunity to associate with one another. Indeed, it is common practice.

And that's part of the reason, Mr. Chairman, if you recall, that for those several weeks while these prisoners claim to have rejected the offer of clemency because they feared that they would not have the right to associate with each other, the condition hanging over their head for the acceptance of that offer that they would be, according to press reports, they were not allowed to associate upon

release. Indeed, that's why two rejected—could have been for renouncing violence, could have been for the point that they could not associate with each other, but two rejected the offer. So we were told or led to believe that they would not be allowed.

Well, in 2 days there is supposed to be a rally, so we hear, in Puerto Rico where they are going to be allowed to associate with each other. So I suggest that we were misinformed for the last several weeks, and I don't think it is out of the order for someone in their capacity to be precluded or prohibited from associating.

So I thank the gentleman for yielding.

Mr. OSE. Reclaiming my time, Mr. Chairman. Mr. Towns suggested or implied that he had a copy of the actual offer to the terrorists that were released. I find it interesting that in my packet provided by committee staff I don't yet have a copy of that; and, if possible, I would like to get what he was referring to admitted into the record if it exists.

Finally, recognizing my time is short, I want to be clear on something. I don't have enough time to do justice to the questions that I wish to ask today of this panel. I find it ironic that someone references the epidemic of school shootings and yet chooses to ignore the school bus that was going along in front of the Fraunces Tavern at the time the explosion went off and the children who were on that bus. I find it ironic, and I would wish for a little clarification from committee staff, about the apparent dichotomy between our present debate over gun control issues and the various and sundry weapons and explosive charges that these people were convicted of and then subsequently now been released from prison for. My question is whether or not the weapons and explosives charges that these folks were convicted of would also be felonious now and subject them to imprisonment in the current regime.

And, finally, if I could get some clarification, it is my understanding that it is a legal requirement that when Federal prisoners are to be released that the victims of their acts be notified. If that is the case and it did not occur, what is the consequence of that having not occurred?

I yield back, Mr. Chairman.

Mr. BURTON. The gentleman yields back the balance of his time. Do any other Members have questions—Mr. Hutchinson? Did you have a question, Mr. Barr? Mr. Miller? I am sorry. Mr. Miller.

Mr. MILLER. Thank you very much for being here today. It is a tough position to be in, I know.

What involvement did you have as detectives in investigating the FALN before the bombing that, of course, did so much harm to you? Did you all have any involvement in the investigation of such prior to that?

Mr. PASTORELLA. Is that question addressed to me?

Mr. MILLER. Both of you.

Mr. PASTORELLA. Before I was a bomb squad detective I was assigned to the crime scene unit of the New York City Police Department, and we specifically addressed issues concerning the bombing at Fraunces Tavern, a bomb at the Mobil Corp building where a man was killed and three injured. So we had acquaintances with the FALN through those investigations.

If I may also address Mr. Towns on one particular issue, I find it very ironic when he mentions shootings at the schools, the epidemic of the shooting at the schools and, more recently, the shooting at the Baptist church in Fort Worth, TX, where innocent young people were killed by a maniacal person, when Mr. President Clinton has just released two, Ricardo Jiménez and Elizam Escobar, who were also convicted of having in their possession unregistered, loaded firearms, transporting firearms over State lines, also having a van full of automatic weapons. Isn't that ironic that they were released by the very same President who decries these laws that we have that are not appropriate and not strong enough?

I say to you that the only deterrence that we have today is certainty of penalty, and that is what Mr. Clinton has eliminated from our system: certainty of penalty.

Mr. FOSSELLA. If I may, Mr. Miller, just—there were FBI officials who did nothing but practically track the FALN throughout 1970's and 1980's, and I think Director Freeh was before the Congress a couple of years ago and others have testified that they are one of the most efficient and deadly terrorist organizations. That is why they required a number of FBI agents to track the FALN.

Mr. MILLER. Are there any other FALN in prison today, do you know? Maybe the next panel will be able to answer that.

Mr. SENFT. One of the leaders is William Morales, who is in Cuba, and he is looking for amnesty. He wants to come back in the country. That is the next thing. That is what I am concerned about.

Mr. FOSSELLA. There are also at least two that we are aware of because they rejected the offer of clemency.

Mr. SENFT. And he didn't apologize. In 1997, they had a big article of him in the paper recently, and he said he does not apologize to anybody that was maimed or killed, that he is a freedom fighter. He is a murderer and a terrorist.

Mr. MILLER. Thank you, Mr. Chairman.

Mr. BURTON. Mr. Hutchinson.

Mr. HUTCHINSON. I thank the Chair, and I am grateful for each witness and their testimony and the light that you have brought to this particular subject.

It is deeply troubling to me that, in a day when we have proponents here in Congress advocating a victims' rights amendment to the Constitution, that we do not even have notification to victims of a clemency that affects their lives so dramatically. And I just think that is an interesting contrast. I think it would be interesting to look at the language of that amendment to see what it says about notification of rights, notification to victims pertaining to their rights.

And I am also mindful that when I was a U.S. Attorney one of the things that we moved toward was having a victims' rights coordinator in each U.S. Attorney's office. So this Department of Justice has a requirement for each U.S. Attorney to notify victims to keep them informed as to what is happening in a particular case that affects them, whether there is restitution that is involved, what their feelings are toward the punishment aspect of it. The probation officers have a responsibility to contact the victims of offenses within the Department of Justice, and so this is a rule that

each U.S. Attorney has to operate under here in this country, under the Department of Justice, under this administration.

And then it is my understanding from each of you that, prior to the grant of this clemency, you had no notification and that you learned it in the newspaper. That is just extraordinary to me, and I just think that contrast ought to be noted, and I think it is a legitimate issue.

Mr. Towns made the point that, well, do we have any oversight responsibility? And he referred back to whenever Gerald Ford pardoned Richard Nixon and we did exercise oversight responsibility in the Congress. I certainly wasn't here. But that happened.

And I thought also, well, how did President Ford respond to that? There was an opportunity for him to claim executive privilege. There was an opportunity for him to assert the fact that he didn't want to discuss this with the U.S. Congress. But the action that President Ford took was to come before, actually, the Judiciary Committee and appeared as one of the only Presidents ever to testify in Congress and to explain not only what went into his decision but also to answer every question of the Congress of the United States on that issue. And you have to contrast that as well with this administration that asserts executive privilege and will not stand here and explain what led to this extraordinary grant of clemency.

And so you have got the notification of victims' issue. You have got the procedure issue as to what is followed that precedes a grant of clemency.

I have a lot—I am sure every member of this panel has a lot of requests from individuals in their district that were convicted of some offense, minor or not minor, regardless, they are interested in a pardon. And we tell them the procedure to follow. There is an office of pardon in the executive branch. And it is not an easy route. We have all worked on that. And then it is certainly within the prerogative of the President to grant a pardon on a clemency. But we try to follow procedures so there is some element of fairness, some element of fairness in the way that this extraordinary power is administered.

And, finally, I just want to remark that I believe that clemency and pardons is an appropriate use of the executive branch. I have no dispute about that, and I would not want to diminish the authority of the President in that regard. It should be used in times of compassion, in mercy, and in areas where there has been an injustice in the system.

But whenever we have under these circumstances a lack of remorse that has been expressed, when we have an overriding of the advice of law enforcement, whenever we have no notification of the victims, I do not believe that is an appropriate use, even though it is a constitutional use of the clemency authority.

And so, Mr. Chairman, I apologize for not asking a whole lot of questions here, but I just wanted to respond and make those remarks, and I would be happy to leave it open if anyone had any response to the statements that I just made.

Mr. WAXMAN. Will the gentleman yield?

Mr. HUTCHINSON. Happy to yield, Mr. Waxman.

Mr. WAXMAN. I strongly support what you say about the rights of the victims to be heard, and I am also troubled at the failure to express remorse on the part of these individuals.

I disagree with Mr. Towns who argued we shouldn't apply any conditions. Conditions are often put on any kind of leniency. But I do think there is a distinction to be made. Presidents don't always come before the Congress to explain their actions, and they have asserted executive privilege all the way from George Washington to George Bush as to all the input they had in advice from their staff on those decisions.

But your criticism is well taken when Mr. Towns suggested that President Ford in some way did not come forward. He did, and he did testify. And of course the magnitude of having pardoned President Nixon was the kind of thing where a President needed to personally come forward before the Congress.

The President has now finally expressed his views as to the decision he made, and whether we agree with that decision or not will depend on a lot more input from people that he heard from and we have not.

Mr. HUTCHINSON. I thank the gentleman for his comments.

I yield back.

Mr. BURTON. I am the last 5-minute person.

First of all, I would like to thank all of you for being here and testifying. I know it is difficult to open old wounds, and you have had to do that a number of times recently.

The No. 1 responsibility of the Government of the United States is to protect its citizens from enemies, both foreign and domestic. And terrorists any place in the world that threaten the lives of Americans falls in the category of enemies foreign or domestic.

And in this particular case, it appears as though our government has failed or made a mistake by allowing people who are associated or involved with a known terrorist organization that perpetrated all kinds of horrible acts on American people and killed a lot of them, it appears there has been a failure here. To those of you who suffered, I apologize for that. We will continue to try to find every answer as to why these people are back on the streets. And I pray to God that this will not start a new reign of terror either by these people or their fellow terrorists.

With that, thank you very much for being here today. We appreciate your testimony.

We will now go to the next panel. We now welcome Neil Gallagher, Michael Cooksey and John Jennings to the table.

While they are coming forward, let me just say that Mr. Gallagher is the Assistant Director of the Federal Bureau of Investigation; Michael Cooksey is an official with the Bureau of Prisons; and Jon Jennings is Assistant Attorney General with the Department of Justice.

[Witnesses sworn.]

Mr. BURTON. Do any of you have an opening statement?

Mr. Cooksey, you have an opening statement.

STATEMENTS OF MICHAEL B. COOKSEY, ASSISTANT DIRECTOR FOR CORRECTIONAL PROGRAMS, BUREAU OF PRISONS; JON JENNINGS, ACTING ASSISTANT ATTORNEY GENERAL FOR LEGISLATIVE AFFAIRS, DEPARTMENT OF JUSTICE; AND NEIL GALLAGHER, ASSISTANT DIRECTOR FOR NATIONAL SECURITY, FEDERAL BUREAU OF INVESTIGATION

Mr. COOKSEY. I have an opening statement.

Mr. Chairman, members of the committee, I appear before you today on behalf of the Federal Bureau of Prisons in regard to the grant of clemency to 16 current and former Bureau of Prisons inmates who were members of the Armed Forces National Liberation, commonly known as the FALN. In general terms, I will describe the Bureau of Prisons's role in the executive clemency process, the Bureau of Prisons's telephone records procedures, and assistance the Bureau of Prisons provides to law enforcement agencies and others in computing sentences based on hypothetical sentencing changes. And I am also prepared to speak generally about the behavior of the 16 FALN inmates while in the custody of the Federal Bureau of Prisons.

In my capacity as the Bureau of Prisons Assistant Director of Correctional Programs, I am responsible for developing national policy and oversight requirements for many aspects of institution operations including prisoner transportation, sentence computations, mail room operations, receiving and discharge, emergency preparedness, chaplaincy services, psychology services, drug treatment programs, intelligence gathering, security programs and programs for inmates with special needs.

Each of the Bureau's six regional directors has direct oversight responsibility for the institutions in their regions. Each region has 15 or more institutions. There are more than 116,000 inmates in the Bureau's 94 institutions, and there are another 16,000 Federal inmates in facilities under contract with the Bureau of Prisons.

The Bureau of Prisons' policy regarding the provision of commutation of sentences directs the Bureau of Prisons' staff to provide inmates with appropriate forms and instructions for filing petitions for commutation of sentence. This policy further provides that staff suggest to inmates that the petitions be sent through the warden to the Pardon Attorney, thereby permitting institution staff to forward necessary paperwork to the Pardon Attorney, including presentence reports and progress reports.

When the Pardon Attorney needs additional information, he is expected to contact the warden of the institution where the inmate is housed, and the warden provides the requested documents to the Pardon Attorney. The Bureau of Prisons also makes available to the Pardon Attorney direct access to our on-line inmate information system which provides data on inmate rule violations and inmate adjustment, including work assignments and program participation. Neither the original packets nor subsequent information from the warden contains any recommendations from the Bureau of Prisons regarding the merits of the case.

This policy further provides that, when specifically requested by the Pardon Attorney, the Director of the Bureau of Prisons submits a recommendation on a petition for sentence commutation. This recommendation, which may be based on comments received from

the warden at the institution where the inmate is housed, is forwarded to the Pardon Attorney.

There have been media reports regarding information gleaned from telephone conversations between FALN inmates and members of the public. The Bureau of Prisons records all inmate telephone calls made on inmate telephones. All inmate telephones contain signs notifying the inmates that such calls are recorded. If inmates wish to call their attorneys, they must contact the staff member who will place the call, if approved, on a telephone that is not recorded and not monitored. Records of inmate calls are retained at the institution from which the calls were placed for a period of time.

The Bureau of Prisons is responsible for computing sentences for all Federal inmates. The sentence computation is a mathematical method of determining the various components of a sentence to imprisonment. There are many Federal statutes that govern sentence computation and many court decisions which pertain to sentence computation. Bureau of Prisons staff have substantial expertise in this regard. On occasion, Bureau of Prisons' staff are asked to provide assistance to other agencies or components, including the Pardon Attorney, U.S. Probation Officers, U.S. Attorneys, defense attorneys and the courts, when changes are being considered to inmates' sentences.

Of the 16 inmates who were offered clemency on August 11, 1999, 14 were in Bureau of Prisons' custody at the time the offer was made. Three of the 16 inmates are still in the Bureau of Prisons' custody. Two were offered sentence reductions but not an immediate release, and one of those refused to sign the offer. A third inmate was given relief only with respect to the unpaid balance of his fines. That individual had previously satisfied his sentence and been released from custody under supervision but was returned for violating the conditions of his release.

Given the voluminous records that some inmates have as a result of spending many years in Federal prisons it was impossible to carefully review the complete records of these inmates, but I have reviewed the information available through our automated information systems, and I have reviewed written summaries prepared by institution staff regarding the inmates' current progress. All medically able Bureau of Prisons' inmates are required to work. Additionally, the inmates in question completed a variety of educational and vocational training programs in addition to assorted other self-development programs at our institutions.

Mr. Chairman, that concludes my remarks.

[The prepared statement of Mr. Cooksey follows:]

STATEMENT OF MICHAEL B. COOKSEY, ASSISTANT DIRECTOR FOR
CORRECTIONAL PROGRAMS OF THE FEDERAL BUREAU OF PRISONS

BEFORE THE

COMMITTEE ON GOVERNMENT REFORM

September 21, 1999

Mr. Chairman and Members of the Committee, I appear before you today, on behalf of the Federal Bureau of Prisons, in regards to the grant of clemency to 16 current and former Bureau of Prisons inmates who were members of the Armed Forces National Liberation, commonly known as the "FALN." In general terms, I will describe: (1) the Bureau of Prisons' role in the executive clemency process, (2) the Bureau of Prisons telephone recording procedures, and (3) assistance the Bureau of Prisons provides to law enforcement agencies and others in computing sentences based on hypothetical sentencing changes. I am also prepared to speak generally about the behavior of the 16 FALN inmates while in the custody of the Federal Bureau of Prisons.

In my capacity as the Bureau of Prisons Assistant Director for Correctional Programs, I am responsible for developing national policy and oversight requirements for many aspects of institution operations including prisoner transportation, sentence computations, mailroom operations, receiving and discharge, emergency preparedness, chaplaincy services, psychology services, drug treatment programs, intelligence gathering, security procedures, and programs for inmates with special needs. Each of the Bureau's six Regional Directors has direct oversight responsibility for the institutions in their regions: each region has 15 or more institutions. There are more than 116,000 inmates in the Bureau's 94 institutions, and there are another 16,000 federal inmates in facilities under contract with the Bureau of Prisons.

Bureau of Prisons' Role in Executive Clemency Decisions

The Bureau of Prisons' policy regarding petitions for commutation of sentences (P.S. 1330.14, Petition for Commutation of Sentence, November 24, 1997, published at 28 Code of Federal Regulations Section 571.41), directs Bureau of Prisons staff to provide inmates with appropriate forms and instructions for filing petitions for commutation of sentence. The policy further provides that staff suggest to inmates that the petitions be sent through the warden to the Pardon Attorney, thereby permitting institution staff to forward the necessary paperwork to the Pardon Attorney, including presentence reports and progress reports. When the Pardon Attorney needs additional information, he is expected to contact the warden of the institution where the inmate is housed and the warden provides the requested documents to the Pardon Attorney. The Bureau of Prisons also has made available to the Pardon Attorney direct access to our on-line inmate information system, SENTRY, which provides data on inmate rule violations and inmate adjustment, including work assignments and program participation. Neither the original packets nor any subsequent information from the warden contains any recommendations from the Bureau of Prisons regarding the merits of the case.

This policy further provides that, when specifically requested by the Pardon Attorney, the Director of the Bureau of Prisons submits a recommendation on a petition for sentence commutation. This recommendation, which may be based on comments received from the warden at the institution where the inmate is housed, is forwarded to the Pardon Attorney.

When a petition for commutation of sentence is granted by the President, the original warrant is sent to the warden of the prison where the inmate is housed, with a copy to the Director of the Bureau of Prisons. The warden takes action as directed by the warrant, including recalculating the inmate's sentence in accordance with the commutation order.

Bureau of Prisons Telephone Recording Practices

There have been media reports regarding information gleaned from telephone conversations between FALN inmates and members of the public. The Bureau of Prisons records all inmate telephone calls made on inmate telephones. All inmate telephones contain signs notifying the inmates that such calls are recorded. If inmates wish to call their attorneys, they must contact staff who will place the call, if approved, on a telephone that is not recorded and not monitored. Records of inmate calls are retained at the institution from which the calls were placed for a period of time.

Sentence Computations

The Bureau of Prisons is responsible for computing sentences for all federal inmates. A sentence computation is the mathematical method of determining the various components of a sentence to imprisonment, (e.g., length of sentence + date sentence was imposed - jail time credit - earned good time credit = release date). There are many federal statutes that govern sentence computation and many court decisions which pertain to sentence computation. Bureau of Prisons staff have substantial expertise in this regard. On occasion, Bureau of Prisons staff are asked to provide assistance to other agencies or components, including the Pardon Attorney, United States Probation Officers, Assistant United States Attorneys, defense attorneys, and the courts, when changes are being considered to inmates' sentences.

Institution Adjustment/Behavior of the 16 FALN Inmates

Of the sixteen inmates who were offered executive clemency on August 11, 1999, fourteen were in Bureau of Prisons custody at the time the offer was made (two had been released several years earlier after completing their five-year sentences). Three of the 16 inmates are still in Bureau of Prisons custody, two were offered sentence reductions but not an immediate release and one of those refused to sign the offer. The third inmate was given relief only with respect to the unpaid balance of his fine. That individual had previously satisfied his sentence and been released from custody (under supervision) but was returned for violating the conditions of release.

Given the voluminous records that some of these inmates have as a result of spending many years in federal prisons, it was impossible to carefully review the complete records about these inmates, but I have reviewed the information available through our automated information systems and I have reviewed the written summaries prepared by institution staff regarding the inmates' current progress. All medically able Bureau of Prisons inmates are given a work assignment. Additionally, the inmates in question completed a variety of educational and

vocational training programs, in addition to assorted other self-development programs offered at our institutions.

In the summer of 1984, Oscar Lopez began planning an escape from the United States Penitentiary in Leavenworth. Additionally, on two occasions in 1986 he was found guilty of violating Bureau of Prisons rules, once for possessing a handcuff key and once for possession of a weapon. Mr. Lopez spent some time at the Bureau's administrative maximum security facilities, but has maintained clear conduct since 1986, and has successfully completed several Bureau of Prisons programs including education and work. Mr. Lopez is classified as high security and remains in the Federal Penitentiary at Terre Haute, Indiana.

Carmen Valentin spent nearly her entire 16 years in prison at the Federal Correctional Institution at Dublin, California, where she maintained clear conduct and completed several work and educational programs. Ms. Valentin was classified as a low security inmate.

Ida Rodriguez spent the last 14 years at the Federal Correctional Institution at Dublin, California. Early in her term of imprisonment she was found guilty of failing to obey an order in violation of Bureau of Prisons rules on two occasions, but since then she maintained clear conduct. Ms. Rodriguez completed several education programs. She was classified as a low security inmate.

Dylcia Pagan spent the past 14 years at the Federal Correctional Institution at Dublin, California, where she completed the General Education Diploma (GED) program, a vocational training program and a variety of other programs including drug education and parenting. She received four incident reports: one in 1984 for refusing an order; three in 1998 for insolence/conduct which disrupts, possession of unauthorized property otherwise allowed, and possessing unauthorized items. Ms. Pagan was classified as a low security inmate.

Elizam Escobar spent the past 13 years at the Federal Correctional Institution at El Reno, Oklahoma, where he completed a variety of vocational training programs as well as other programs. He was found guilty of three violations of Bureau of Prisons rules, including using the phone or mail without authorization and two charges of refusing to work. Mr. Escobar was classified as a medium security inmate.

Ricardo Jimenez was found guilty of three violations of Bureau of Prisons rules, including refusing to participate in a program in 1998, failure to follow safety regulations in 1997, and assault without serious injury in 1991. Mr. Jimenez was housed at the United States Penitentiary in Lewisburg for most of his term of imprisonment, but transferred to the penitentiary at Terre Haute, Indiana, in 1998. Mr. Jimenez completed several educational and vocational training programs. He was classified as a high security inmate.

Alicia Rodriguez spent her entire incarceration at the Federal Correctional Institution in Dublin, California, where she maintained clear conduct. She participated in various vocational and educational programs. She was classified as a low security inmate.

Alberto Rodriguez spent nearly all of his term of imprisonment at the United States Penitentiary in Lewisburg, Pennsylvania, where he completed numerous vocational and

educational courses. He was transferred in June 1998 to United States Penitentiary, Beaumont, Texas. Mr. Rodriguez maintained clear conduct during his entire term of incarceration and was classified as a low security inmate.

Alejandrina Torres was initially designated to the Federal Correctional Institution in Tucson, Arizona, in October 1985. She was subsequently transferred to four institutions for various reasons, ending up at the Federal Correctional Institution at Danbury, Connecticut, in February 1994. She received 16 incident reports for various violations of institution rules, the last of which was in April 1998 for being unsanitary and untidy. However, between 1988 to 1998 she received no incident reports. Ms. Torres completed her GED while incarcerated, as well other educational and vocational programs. She was classified as a low security inmate.

Edwin Cortez was originally designated to the United States Penitentiary in Lewisburg, Pennsylvania, in October 1985, was subsequently transferred to the United States Penitentiary in Leavenworth, Kansas, in August 1993, and then transferred to the United States Penitentiary in Terre Haute, Indiana, in February 1994. In October 1997, he was transferred to the United States Penitentiary Lewisburg, Pennsylvania. On three occasions, Mr. Cortez violated institution rules; failure to perform work as instructed, possession of anything not authorized, and unauthorized physical contact. Mr. Cortez completed several education courses during his confinement, receiving an Associate Degree in Accounting and Business Management. Mr. Cortez was classified as a low security inmate.

Adolfo Matos was initially designated to the Federal Correctional Institution at El Reno, Oklahoma, in February 1984. In December 1984, Mr. Matos received a disciplinary transfer to the United States Penitentiary in Lompoc, California. He received seven incident reports for being in an unauthorized area, possessing a non-hazardous tool, refusing to obey an order, insolence, encouraging a group demonstration, stealing, unauthorized use of telephones, and assault with serious injury. He completed a vocational computer program and participated in other instructional programs. Mr. Matos was classified as a high security inmate.

Luis Rosa was released from a Illinois Department of Corrections' sentence and began service of his federal term at the United States Penitentiary at Leavenworth, Kansas, in May 1996. Mr. Rosa received a college degree while serving his state sentence, but did not participate in educational programs while in the federal system. He maintained clear conduct while in the federal system and was classified as a high security inmate.

Antonio Camacho-Negron was initially designated to the Federal Correctional Institution at Ray Brook, New York, in July 1989. He was subsequently transferred to the Federal Correctional Institution in McKean, Pennsylvania, in November 1989 and then to Allenwood, Pennsylvania, in August 1993. Mr. Camacho-Negron maintained clear conduct until he received two incident reports for violations of institution rules in April 1998 for refusing to obey an order and failing to follow safety regulations. Mr. Camacho-Negron has participated in numerous educational programs since his arrival in the Bureau of Prisons. Mr. Camacho-Negron is classified as a medium security inmate.

Juan Enrique Segarra-Palmer was initially designated to the Federal Correctional Institution at Marianna, Florida, in July 1989. He was subsequently transferred to the United States Penitentiary in Atlanta, Georgia, in October 1992, and then was transferred back to Marianna in August 1995. Mr. Segarra-Palmer was again transferred to the Federal Correctional

Institution at Coleman, Florida, in January 1998. He has received two incident reports for using the phone without authorization and engaging in sexual acts. Mr. Segarra-Palmer is classified as a medium security inmate.

I hope that this information is helpful to the Committee. I would be happy to answer any questions you may have at this time.

Mr. BURTON. Mr. Jennings.

Mr. JENNINGS. Mr. Chairman, Mr. Waxman, distinguished members of this committee, my name is Jon Jennings. I have been the Acting Assistant Attorney General in the Office of Legislative Affairs since April of this year.

The Office of Legislative Affairs serves as the liaison to Congress for the Department and implements the legislative strategy to carry out the Attorney General's initiatives requiring congressional action. The Office articulates the Department's views on congressional legislative initiatives and responds for the Department to requests and inquiries from congressional committees, individual Members and their staffs. The Office facilitates and coordinates the Department's response to congressional oversight inquiries as well as the appearance of Department witnesses before congressional committees.

I want to begin by extending my and the Department's deepest sympathy to those whose lives were tragically affected by FALN criminal conduct. There can be no question that they and their families have suffered tremendous pain and loss. Nothing in my testimony today should in any way be understood as disrespect for the tragedy suffered by those from whom you have heard today.

Mr. Chairman, I was raised about 60 miles from you in Indiana, and I was raised to respect and admire members of the law enforcement community as American heroes, and I wish there was something that I personally could do to take away their pain and suffering that has been caused by these cowardly acts of violence.

As you know, Mr. Chairman, the Department has produced thousands of pages of records in response to your September 1st subpoena. We have provided records from the Bureau of Prisons and the Parole Commission regarding the 16 individuals who were named in your subpoena, including judgment and commitment orders, petitions for clemency, presentence reports, and reports about their conduct in prison. We are processing additional documents, including any tapes of their telephone conversations while in prison that may exist and other nonprivileged records relating to the clemency petition. Today we are providing additional records and continuing our efforts to respond to your subpoenas. We're also prepared to produce a large number of letters from the public supporting the clemency petitions, although your staff may first wish to review samples of them since many of them are largely identical form letters and petitions.

In addition, at the request your Chief Counsel, Mr. Wilson, I arranged for the Pardon Attorney to brief staff of this committee on the pardon process. We are also gathering documents in response to your September 16th subpoena and will provide with you nonprivileged records as promptly as possible.

As the committee knows, the Department of Justice acts as a confidential advisor to the President in connection with the exercise of his constitutional authority to grant pardons. Because the pardon power is an exclusive constitutional prerogative of the President, we have historically declined to disclose the substance of the Department's advice and communications to the President concerning these decisions.

As Attorney General Mitchell Palmer explained some 80 years ago to a congressional committee, "The President in his action on pardon cases is not subject to the control or supervision of anyone, nor is he accountable in any way to any branch of the government for his action, and to establish a precedent of submitting pardon papers to Congress or to a committee of Congress does not seem to me a wise one."

In addition, the disclosure of advice that members of the executive branch gave to the President would have a chilling effect on the frank exchange of views that the President needs in order to receive full and accurate advice.

In response to this committee's subpoenas to the Department and to the White House, the President has asserted executive privilege as to some of the subpoenaed documents and certain areas of testimony that the committee seeks. As I indicated in my letter to you dated September 16th, the President has asserted privilege with respect to: No. 1, advice and other deliberative communications to the President regarding his clemency decision; No. 2, deliberative documents and communications generated within and between the Department of Justice and the White House in connection with the preparation of that advice; and, No. 3, testimony by Department officials concerning executive branch deliberations in connection with the clemency decision.

Consistent with the President's privilege assertion, I can provide a limited amount of nonprivileged information concerning the Department's role as advisor to the President on clemency matters. The petitions for commutation were submitted to the Department in 1993. In accordance with Department regulations, the Department submitted a written report and recommendation to the White House in 1996 which stated whether, in the words of the regulation, the President should grant or deny the petition for clemency.

In light of the President's assertion of privilege, I am not at liberty to disclose the contents or substance of that report or recommendation. I can, however, tell you that the clemency review process did not end with that submission and that there were subsequent communications on the subject of clemency between the Department and the White House.

I cannot tell you anything more about those later communications because they are the subject of the President's assertion of executive privilege. I can, however, pledge to you that we have made and will continue to make every effort to provide the committee as soon as we can with the remaining responsive documents for which the President doesn't assert his privilege; and I look forward to working with your staff.

[The prepared statement of Mr. Jennings follows:]



Department of Justice

STATEMENT

OF

JON P. JENNINGS
ACTING ASSISTANT ATTORNEY GENERAL
OFFICE OF LEGISLATIVE AFFAIRS

BEFORE THE

COMMITTEE ON GOVERNMENT REFORM
U. S. HOUSE OF REPRESENTATIVES

CONCERNING

CLEMENCY FOR PUERTO RICAN NATIONALISTS

PRESENTED ON

SEPTEMBER 21, 1999

Mr. Chairman and Members of the Committee, my name is Jon Jennings and I have been the Acting Assistant Attorney General in the Office of Legislative Affairs since April of this year. The Office of Legislative Affairs serves as the liaison to Congress for the Department and implements the legislative strategy to carry out the Attorney General's initiatives requiring Congressional action. The Office articulates the Department's views on congressional legislative initiatives and responds for the Department to requests and inquiries from congressional committees, individual members and their staffs. The Office facilitates and coordinates the Department's response to congressional oversight inquiries as well as the appearance of Department witnesses before congressional committees.

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As you know, Mr. Chairman, the Department has produced thousands of pages of records in response to your September 1st subpoena. We have provided records from the Bureau of Prisons and the Parole Commission regarding the sixteen individuals who were named in your subpoena, including judgment and commitment orders, the petition for clemency, pre-sentence reports and reports about their conduct in prison. We are processing additional documents,

including any tapes of their telephone conversations while in prison that may exist, and other non-privileged records relating to the clemency petition. Today, we are providing additional records and continuing our efforts to respond to your subpoenas. We also are prepared to produce a large number of letters from the public supporting the clemency petitions, although your staff may first wish to review samples of them, since many of them are largely identical form letters and petitions. In addition, at the request of your chief counsel, Mr. Wilson, I arranged for the Pardon Attorney to brief staff of this Committee on the pardon process. We are also gathering documents in response to your September 16th subpoena and will provide you with non-privileged records as promptly as possible.

As the Committee knows, the Department of Justice acts as a confidential advisor to the President in connection with the exercise of his constitutional authority to grant pardons. Because the pardon power is an exclusive constitutional prerogative of the President, we have historically declined to disclose the substance of the Department's advice and communications to the President concerning these decisions. As Attorney General Mitchell Palmer explained 80 years ago to a Congressional committee:

The President, in his action on pardon cases, is not subject to the control or supervision of anyone, nor is he accountable in any way to any branch of the government for his action, and to establish a precedent of submitting pardon papers to Congress, or to a Committee of Congress, does not seem to me to be a wise one.

Letter from A. Mitchell Palmer, Attorney General, to Hon. George W. Edmonds, Chairman, House Committee on Claims (Sept. 25, 1919).

In addition, the disclosure of advice that members of the Executive Branch give to the President would have a chilling effect on the frank exchange of views that the President needs in order to receive full and accurate advice.

In response to this Committee's subpoenas to the Department and the White House, the President has asserted executive privilege as to some of the subpoenaed documents and certain areas of testimony that the Committee seeks. As I indicated in my letter to you dated September 16th, the President has asserted privilege with respect to:

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with that submission, and that there were subsequent communications on the subject of clemency between the Department and the White House. I cannot tell you anything more about those later communications because they are the subject of the President's assertion of executive privilege.

I can, however, pledge to you that we have made and will continue to make every effort to provide the Committee as soon as we can with the remaining responsive documents for which the President does not assert his privilege. I hope that your staff will work with us so that we can prioritize our efforts regarding materials of most interest to the Committee.

Mr. BURTON. Mr. Gallagher.

Mr. GALLAGHER. Mr. Chairman, again, my name is Neil Gallagher. I am Assistant Director of the FBI's National Security Division with responsibility for counterterrorism and counterintelligence. The FBI uses a very simple definition of terrorism; and, if I may, I will quote it. It is the unlawful use of force or violence against persons or property to influence or intimidate a government, the civilian population, or any segment thereof in furtherance of a political or social cause.

The FBI first learned of the existence of the FALN back on October 26, 1974, when they issued a communique taking credit for the five bombings in New York. In the next decade, their activities resulted in 72 actual bombings, 5 deaths, 83 injuries, and over \$3 million in property damage.

The other terrorist organization that you heard of today, the Los Macheteros, first became known to the FBI and to the world in 1978 when they issued a communique taking credit for the murder of a Puerto Rican police officer by the name of Julio Rodriguez. That murder was on August 24th, 1978. At the time of their communique, they also provided an explanation. They indicated they did not intend to kill Police Officer Rodriguez, they only wanted to take his weapon, his badge, and his car.

Subsequent to that activity, in 1979 the Macheteros were involved in a series of eight bombings in 1 day and, as was discussed earlier today, an ambush of the U.S. Navy bus resulting in the death of two U.S. Navy personnel.

In 1981, they destroyed nine U.S. fighter jets that were being stored on the island of Puerto Rico. They were also involved in a Wells Fargo robbery in Santurce, Puerto Rico, which resulted in the loss of \$341,000.

In 1982, they ambushed four sailors returning to a ship, resulting in the death of one sailor.

In 1983, they were engaged in a rocket attack against the Federal building which housed the FBI, just barely missing the offices of the FBI in San Juan, Puerto Rico.

On September 12th, 1983, they came to the United States for their activity and were a part of the Wells Fargo terminal armored car robbery up in West Hartford, CT, resulting in the loss of approximately \$7.1 million.

In 1986, they again returned to bombings at U.S. Government facilities throughout Puerto Rico, 10 bombings in 1 day.

In 1988, they bombed the U.S. Army-Navy recruitment station.

In 1989, there were two bombs at a shopping plaza in Puerto Rico.

If you turn to the charges that the FALN subjects in Chicago were charged with and you look at the indictment and you realize that the indictment speaks not only to seditious conspiracy but talks about the involvement in 28 bombings, I think you also have to focus in that these bombings were at banks, stores, office buildings, government buildings, more importantly, they were in highly densely populated areas.

I am taken, as I listened to the prior testimony of the previous panel, in particular the two New York City police officers who responded to the bombings in New York, much has been said that

there has not been any loss of life for these 28 bombings. The only thing that separates that is that there was not a Chicago police officer who happened to come across 1 of these 28 bombs. The reality is that these bombings were placed with upwards of six sticks of dynamite. They had electronic devices on them, so there were timing devices. Whoever placed the bomb placed the bomb and walked away.

On November 3rd, 1976, we located a bomb factory at 2659 West Haddon Street, Chicago. We had determined that at one point there were in excess of 200 sticks of dynamite in this bomb factory. Again, of significance is the reality that this bomb factory was located in a densely populated area.

On March 15th, 1980, there was an armed takeover of the Carter-Mondale headquarters in Chicago. Again, there was no loss of life. However, armed individuals came in and took over the political headquarters; and, by luck, there was no incident.

On April 4th, 1980, the FALN subjects were arrested. I think it is fair and we should focus in on the events of that day. There were two subsequent series of events that resulted in their arrest.

First, there was an arrest by the local police of two individuals in a stolen van. At the same time, they received a call from a citizen that saw some suspicious activity. He saw—this citizen saw an individual in jogging clothes running toward a van stopped on the highway to have a cigarette, called the Evanston, IL, Police Department who responded. One police officer responded. Fortunately for him, he called for backup immediately, because in the van were the remaining FALN subjects.

What they had done was to place in stolen vehicles in the general area—the van was their point of debarkation from and what we believe to be a point from which they would rob an armored truck. What was in the van—and you cannot place any one weapon to any one individual, but there were shotguns, rifles, revolvers, semiautomatic pistols and automatic pistols in the van.

August 30th, 1985, we arrested 20 members, collaborators of the Macheteros, with respect to the \$7.1 million armored car terminal robbery in West Hartford, CT. Of those 20, 7 have been convicted, and 6 have pled guilty, resulting in 18 individuals either being convicted or remaining as fugitives.

Of particular concern to the FBI is the fact that, of the \$7.1 million, most of it has not been recovered. We know that some of the money went to Cuba. We know that a good portion of the money was utilized to fund the operation of the Macheteros.

That brings me to the question which I think we should look at today, is there a current threat with respect to the FALN and Macheteros?

First of all, if you look back at 1980 and 1985, it had its initial desired results. There was a serious reduction in the bombings. There was a serious reduction in the loss of life. At the same time, the FALN were extremely quiet. And there was a purpose behind this. They were committed to try to secure the release of their comrades who were in prison.

At first, there was an attempted breakout, but then they got into a different approach as to try to secure their release.

However, in December 1992 there was a break from that. There was a bomb at the U.S. military recruiting center in which, as we later learned of the details of that bombing, the purpose was to gauge the Puerto Rican response to the resumption of armed struggle activities of Puerto Rican independence. There was an individual who was subsequently arrested and convicted for that bombing.

With respect to the Macheteros, on March 31st, 1998, as you heard in the first panel, there was a bombing at an aqueduct project facility in Puerto Rico. On June 9, 1998, there was a bomb placed at a branch of the Banco Popular bank in Puerto Rico. In both instances the Macheteros gave a communique.

Disturbing, however, there was a second bomb placed on June 25th, 1998, at another branch of the Banco Popular bank. In that instance, a police officer responded to a suspicious device. What he found appeared to be a flashlight on the windowsill. He picked it up and as he picked it up it detonated, resulting in his death.

The Macheteros issued a communique which resulted in a statement that they were not responsible for this particular bombing. I would suspect, however, given the significance of two branches of the same bank and the similarities in the device, we are now convinced that that was, in fact, a Macheteros terrorist act that they tried to distance themselves from simply because of the fact that a Puerto Rican police officer again was killed.

Earlier you were told about a more recent threat, and that comes from Ojeda Rios who on September 13th, 1999, issued a communique that was released in the San Juan newspapers again indicating that the Macheteros would not remain with their arms crossed should the Navy resume activity on the Island of Vieques. He also gives an implied threat to the FBI. We take this very seriously because, again, we were the target of a rocket attack. Also, the last time we attempted to arrest Ojeda Rios there was a shootout, and today there is an FBI agent who is blind in one eye as a result of that shootout.

I go back to my definition of terrorism. I would submit to you that the FALN, the Macheteros, the people who were arrested and convicted that we have discussed today have used force and violence, they have worked against the citizens and destroyed property in the United States, and they have done this for their own political cause.

Mr. Chairman, these are terrorists. These are criminals.

Thank you.

Mr. BURTON. First of all, I want to thank you, Director Freeh, and the FBI for being so thorough in your testimony today. I am sure that there has been some pressure brought to bear, and you need not comment on this, about your testimony, but I just want you to know personally as chairman of this committee I really appreciate your thoroughness.

Let me start off by asking you, you had a written statement that you anticipated sending to us, and it was not sent to us yesterday. Can you tell us why that was not sent to us?

Mr. GALLAGHER. Mr. Chairman, I had a statement that was prepared for testimony before another committee approximately a week and a half ago. I attempted to cover several different areas with respect to this issue, one of which addressed the FBI role and

response to the clemency process. We sent that statement over to the Department of Justice. A determination was made that that portion of the statement was covered by executive privilege. At first it was held back because it was being resolved, and then we were eventually told that it was covered by executive privilege.

So what I have done today is I have, in essence, given you the balance of the statement through a written series of notes that I have that I knew covered the rest and remainder of the statement.

Mr. BURTON. Part of your statement they deemed under the executive privilege and the rest could have been sent to us?

Mr. GALLAGHER. I was not involved in that decision process. I would have to defer.

Mr. BURTON. Usually when that kind of a situation comes up about something that is grand jury material they just redact it and give us what they can. But more recently we have had difficulty with the Justice Department in getting virtually anything.

Let me ask you a direct question. Do you think these guys ought to be out on the street?

Mr. GALLAGHER. Do I think they ought to be out on the street? I think these are criminals and that they are terrorists and they represent a threat to the United States.

Mr. BURTON. Well, I think that about covers it.

Mr. Jennings, why was the FBI prevented from sending this written statement to us and why didn't the Justice Department, if part of it was deemed under the veil of executive privilege, why didn't they just redact that?

Mr. JENNINGS. My understanding is that last week we were awaiting some direction from the White House as to whether the President was going to assert privilege, and therefore we held that testimony back from Mr. Gallagher, because of the fact that we were still working with the White House as to what the President was going to do.

Mr. BURTON. After having heard the President's decision, you did not send any kind of a redacted copy of this document to us. Why was that?

Mr. JENNINGS. Quite frankly, sir, I don't know. And what I can do is I will go back and make sure that you get what you need through Mr. Wilson.

Mr. BURTON. Things that fall under the privilege of the President, the executive privilege, we understand that that should be redacted. But I hope that I do not get a page or two or three pages that is nothing but black lines, which sometimes happens. If we do not receive that in an expeditious fashion, we will be forced to send another subpoena over there to the Attorney General asking her for that, because I want to see that document even though part of it will be redacted.

Mr. JENNINGS. Absolutely.

Mr. BURTON. I understand from my counsel we sent a letter over to the Attorney General last night asking her if she had reviewed that and we have not had a response; is that correct? Are you familiar with that?

Mr. JENNINGS. Yes, I did see the letter that you sent last evening this morning when I came in this morning.

Mr. BURTON. Why didn't we get some kind of response on that?

Mr. JENNINGS. Honestly, sir, I think that with everything that we were doing to try to prepare for this hearing and so forth, I think that we did not get you an answer this morning.

Mr. BURTON. I would think when something is of this import that they would have been moving more quickly.

[NOTE.—With regard to the discussion about the FBI's written hearing testimony, the prepared statement of Assistant Director Neil Gallagher was supplied to the Committee on September 23, 1999 with redactions of text covered by the President's assertion of executive privilege.]

Mr. BURTON. Mr. Cooksey, during your testimony you indicated that you do tape the phone calls of people in prison and they are aware of that. How long do you keep those tapes?

Mr. COOKSEY. Chairman Burton, I would rather not give that information. We keep it for a lengthy period of time, but we don't keep them forever. If I tell you how long—

Mr. BURTON. I understand.

Mr. COOKSEY [continuing]. Then the inmates will know.

Mr. BURTON. I understand. That is a good reason not to divulge that.

How long would it take for to you go through the tapes of these 16 individuals back as far as you can to give us transcripts or copies of those tapes so that we could review them for the American people? Because if these people were advocating terrorism or terrorist activities, as one of them evidently was when he was planning his escape, then the American people have a right to know, and I think the Justice Department and the FBI need to know that so that they can take precautions to make sure that these people are under surveillance. How long would it take to get that?

Mr. COOKSEY. We are complying with that subpoena right now, and it takes a different time at different institutions. We have a new telephone system that is computerized where we can pull off digital tapes, and it is fairly easy in those institutions. In some other institutions where we have an old system and you have these huge reel-to-reel tapes, you have to do searches on them, and it takes quite a bit longer on those.

It's my understanding that we have completed the institutions with the new system, but we're still working on a couple of our penitentiaries that still do not have the new system.

Mr. BURTON. Would it be possible for you to in part comply with our subpoena? In other words, if you already have some of those, produce them, rather than waiting for all of it.

Mr. COOKSEY. We'll send you what we have.

Mr. BURTON. Could you give us also, along with that, some kind of an idea how long you think it will take for the rest?

Mr. COOKSEY. Yes.

Mr. BURTON. I do appreciate your cooperation as well.

Let me just ask you a little bit about Oscar López, because I think this is something that will illuminate for the American people a little bit about the attitude of these people. Oscar López was one of those who was offered clemency, and he evidently refused. One of the documents we subpoenaed from the Justice Department shows that Mr. López, while he was in prison, gave approval to murder somebody. This was after he was convicted of terrorist ac-

tivities and while he was engaged in a conspiracy to break out of Leavenworth penitentiary. If he had not been stopped, obviously lives would have been lost. Where is Mr. López today?

Mr. COOKSEY. Mr. López is at the U.S. Penitentiary, Terre Haute, IN.

Mr. BURTON. In Indiana?

Mr. COOKSEY. Yes.

Mr. BURTON. The records we subpoenaed showed Mr. López got into trouble twice while at the Marion penitentiary. Marion is the prison that replaced Alcatraz. He was in trouble once for having a lock pick—I presume that is to try to pick a lock so he can get out—and another time for having a sharpened instrument. Were you aware of those violations?

Mr. COOKSEY. Yes, sir. And in 1990, he was—he received two incident reports. I don't have for a lock pick. It was a hand-cut key. It was a homemade, hand-cut key so he could get out of his handcuffs. He was apprehended with two of those, and he had a sharpened weapon in his windowsill.

Mr. BURTON. For the past 2 weeks I have heard the White House talk about how those offered clemency were nonviolent offenders. But Mr. López was one of the main FALN leaders, and the FALN planted, we estimated, 130 bombs that killed or maimed well over 100 people.

His probation officer wrote:

His level of remorse, rehabilitation and positive regard for this court's process is minimal, if non-existent. He demonstrates a sustained, consistent commitment to the use of violence and weapons. He will use any means to gain freedom for the purpose of undermining the principles of the U.S. Government. He has already determined that human life is expendable for this purpose.

Now, did the Pardon Attorney have that information?

Mr. COOKSEY. We provided presentence reports to the Pardon Attorney. We provided a progress report and judgment commitment. The Pardon Attorney also has access to automated inmate information.

Mr. BURTON. So he would have had this?

Mr. COOKSEY. He would have had this information. I assume he would have had this information.

Mr. BURTON. Did the Pardon Attorney ever ask if this information was no longer valid, to your knowledge?

Mr. COOKSEY. I don't know that. The Pardon Attorney generally, when he wants additional information, he goes directly to the warden of the institution.

Mr. BURTON. This man does not sound like he is nonviolent. His original sentence for terrorist activities was for 55 years. He got another 15 years for the attempt to escape from Leavenworth. He planned to escape by helicopter. Guards would be held off with gunfire, and helicopters at a nearby military base would be disabled by explosives.

The list of weapons he planned to use in the escape attempt included fragmentation grenades, smoke grenades, phosphorous grenades, 8 M-16 rifles, 2 silencers, 50 pounds of plastic C-4 explosives, 8 bulletproof vests, 10 plastic caps to use with the plastic explosives and 100 30-shot clips to use with automatic weapons. The

fragmentation grenades were to be used on the tower where the guards were to kill them.

Were Mr. López' escape plans nonviolent, in your opinion?

Mr. COOKSEY. No, sir, they were not.

Mr. BURTON. You have been a warden at Marion. That was the Federal prison that replaced Alcatraz. And that is where Mr. López was incarcerated. That would make him one of the most dangerous inmates in the entire Federal system, would it not?

Mr. COOKSEY. He had maximum custody. We moved him to Marion immediately following the escape attempt from Leavenworth.

Mr. BURTON. You considered him to be one of the most dangerous inmates that you had.

Mr. COOKSEY. Yes.

Mr. BURTON. Was he ever in the prison in Florence, CO?

Mr. COOKSEY. Yes, sir. We built a new administrative maximum security facility that opened at the latter part of 1994, early in 1995, and when it opened, we transferred a lot of prisoners from Marion to the administrative maximum, and Oscar López was one of those prisoners.

Mr. BURTON. To me, Oscar López does not sound like a non-violent individual; and I can't understand why the President and his spokesman, Mr. Lockhart, and the National Security Advisor, Sandy Berger, would try to convince the American people that López is a nonviolent offender. So I would like to ask all of you this. Was López considered nonviolent when he was incarcerated?

Mr. COOKSEY. Through our classification system he was considered a maximum custody inmate. You usually become maximum custody when they either have an extreme propensity for violence or escape.

Mr. BURTON. After his escape attempt, was he considered non-violent?

Mr. COOKSEY. No, sir.

Mr. BURTON. Is he considered nonviolent today?

Mr. COOKSEY. I would have to say no.

Mr. BURTON. And yet the President offered him clemency. Do any of you know where President Clinton, Mr. Lockhart, or any of the other spokesmen for the President got the idea that Mr. López was nonviolent? Do you have any idea where he got that idea?

Mr. COOKSEY. I don't.

Mr. BURTON. I would like to read a statement by López made in a television interview after he plotted the escape from Leavenworth.

[o]ur struggle is a just struggle, and because it's a just struggle we have the right to wage it by any means necessary, including armed struggle. We can anticipate more violence. People are not going to sit idle and wait for the oppression to continue. As long as the conditions do not improve, yes, there is that outlet for violence.

This statement was provided last week by the Justice Department, so it shows that at least someone over there knew that maybe he had not completely renounced violence. In fact, after his conspiracy to escape was thwarted, the government's recommendation said that, by his own admission, Oscar López is the head of a group whose purpose is to kill and destroy, notwithstanding his attempt to portray his heinous acts as freedom fighting. His own statements reveal his violent goals and means. So I want to ask all

of you, I want to get a sense of what changed. Did your agencies ever tell the President that Mr. López was not a violent offender?

Mr. GALLAGHER. The FBI has not made such a statement.

Mr. COOKSEY. We've never made such a statement.

Mr. JENNINGS. Speaking for the Department, it's not to my knowledge we ever made that statement.

Mr. BURTON. Let me read another passage from the Justice Department recommendation:

As a central figure in this conspiracy, López promised to pursue his armed struggle against the United States and to train in revolutionary tactics once free. To that end, he taught Richard Cobb clandestine techniques on how to make firing circuits for explosives. López breathed life into the escape plan by virtue of his support group in Chicago. It was López who offered to obtain false identification, weapons and explosives. It was López who sent Jamie Delgado to Dallas to negotiate the purchase of weapons and explosives. It was López, moreover, who gave his approval for Cobb's return visit to Leavenworth and for the murder of Michael Neece. Even behind bars of a Federal penitentiary, Oscar López continued to lead his Chicago supporters in violent plans.

Now let us stop for a second. He said it was OK to murder someone. How could the White House stand behind their claim that this was a nonviolent individual?

Mr. Cooksey, were López' escape plans taken seriously?

Mr. COOKSEY. Yes, sir, they were.

Mr. BURTON. Is he still considered an escape risk, do any of you know?

Mr. COOKSEY. I wouldn't say he's an escape risk today. He's free on the street, but we did have him in the penitentiary up until his release—excuse me, I'm sorry. He's still in the penitentiary. I mistakenly—mistook him for one of the folks that was—

Mr. BURTON. He is still in prison. If he had a chance to escape today or tried to escape, do you think he would do it?

Mr. COOKSEY. We have him in a high security penitentiary.

Mr. BURTON. So you think he might?

Mr. COOKSEY. Yes, sir.

Mr. BURTON. Is this a nonviolent person worthy of clemency? Someone who is in Leavenworth penitentiary for terrorist activities, someone who is plotting a violent breakout from Leavenworth and someone who specifically approves murder, does he sound like to you the kind of guy that ought to be on the street, any of you? Does his failure to renounce violence raise any concerns to any of you?

Does the President's, Mr. Cooksey, offer to free López send a negative message to the Bureau of Prisons' employees whose mission it is to keep people safely and securely incarcerated?

You don't have to answer that if you don't want to.

Mr. COOKSEY. Thank you.

Mr. BURTON. Let me just say this. I think these statements I just read prove beyond a reasonable doubt that this man and I believe his colleagues are a threat to society and to the freedoms we hold dear in this country, and yet the President of the United States offered this man clemency. If he just said I am sorry and I renounce violence, the guy would not do it. But the fact is, how many people who are incarcerated today for heinous crimes would love to get out just by saying to the President, hey, I am sorry?

Charles Manson, I do not know what he'd say. What if he said, I am sorry, please let me out. Is that a reason to let these vermin back on the streets? These people who bombed buildings, who maim children, who kill police officers, who maim them and ruin their families, their lives forever? I think this whole decision by the administration was very, very wrong, especially in the case of offering this individual clemency.

Let me ask one more question here about Juan Segarra-Palmer. It has been said, I think in the President's letter today, I think he specifically mentioned this fellow, that he along with the others were not involved in any heinous acts. He was involved in planning. But the Federal district judge found that Segarra-Palmer had organized and taken part in the attack at Sabana Seca on a U.S. Navy bus taking sailors to a radar station on December 3, 1979, in which two sailors were murdered and nine were wounded. This is the *U.S. v. Menendez-Carrion* case, 820 F.2d 56, in the Second Circuit Court in 1987.

Other documents said, "your offensive behavior is rated as category 8 severity because it involved the death of at least one individual as a result of action initiated by gangs of which you were a member. And while murder may not have been the intended crime, it was caused by the actions of your group."

That was a statement by the U.S. Parole Commission report.

Segarra-Palmer also took part in an attack at Muniz—and I think Mr. Gallagher mentioned this—Muniz air base in Puerto Rico. During that attack, nine A-7 aircraft were destroyed. This was not mentioned. It cost the taxpayers \$40 million by destroying those planes.

Does this sound like a fellow that ought to be out on the street to any of you?

Well, silence. It is not consent, I guess, in this case.

Do you think he should be out on the street? Do you think any of these guys should be out on the street?

Mr. Gallagher.

Mr. GALLAGHER. Mr. Chairman, when the FBI learned of the release of these terrorists, we were concerned with two aspects. First of all, from a practical sense, our concern was that their release would present either a psychological or operational benefit or enhancement to these two terrorist organizations.

Mr. BURTON. Let me interrupt you there. Explain to me how a psychological benefit would be achieved by them being released.

Mr. GALLAGHER. We've had a terrorist organization that started its existence in the early 1970's. After a period of rather heinous terrorist activities for nearly a decade, they are located, apprehended, prosecuted, and convicted. They received sentences by a Federal district court.

The fact that the Macheteros and the FALN continue as terrorist organizations and now have some of their comrades free back in their midst can give a boost to either of the two terrorist organizations. As I stated, September 13, Ojeda Rios issues a communique putting in yet another challenge to the United States. He also drew recognition of the fact that these FALN subjects had been, in fact, released. So the concern is that it will give a moral boost to those

that would consider using violence in furtherance of a political or social cause.

Mr. BURTON. Do any of the rest of you have any comment about this?

Mr. HORN, do you have any questions? Let me yield——

Mr. WAXMAN. Mr. Chairman, may I inquire——

Mr. BURTON. We are going on the 30-minute——

Mr. WAXMAN. That wasn't the agreement as I understood it that we had. I didn't want to interrupt you. I thought we were going to have a 30-minute wrap-up by the staff. But you want to proceed with 30 minutes on your side before we ask any questions?

Mr. BURTON. If you would rather, I can go ahead and yield to you now.

Mr. WAXMAN. Maybe you can tell me how much time you have on your side.

Mr. BURTON. How much time do we have on the clock on our side?

Mr. HORN. I'd like about 7 minutes.

Mr. BURTON. We have 7 minutes to go?

Mr. HORN. I'd like 7 minutes.

Mr. WAXMAN. Mr. Chairman, if I may——

Mr. BURTON. One second.

Mr. WAXMAN. Mr. Chairman, I want to work out an accommodation. Go ahead and take your half-hour. That wasn't our understanding of the procedure for today. We will have that as the ending for this panel, because we're not going to agree to a half-hour more with the staffs on each side.

Mr. BURTON. Then I will yield some time to our staff during this period.

Do you have any comments right now, Mr. Horn?

Mr. HORN. Thank you, Mr. Chairman. Let me ask a couple of basic questions.

When was the first time, Mr. Gallagher, that the FBI knew there was consideration for freeing the Puerto Rican independence group? When did the FBI have an inquiry made either by Justice, the White House, Mr. Ruff, assistants to the President, whatever?

Mr. GALLAGHER. Mr. Horn, unfortunately, I have been instructed by the Department of Justice that that—my response to that question would get into the area of executive privilege, and I'm unable to answer.

Mr. HORN. What's the basis for the executive privilege? Do you know a date when someone—what are they afraid of?

Mr. GALLAGHER. Let me try to answer it. If I get kicked under the table, I know I've gone too far.

Over a period of several years, the FBI has on occasion received an inquiry from the Department of Justice or learned of consideration being given to clemency. When asked, we have provided to the Department of Justice our opinion. When we've heard of it and we have not had a request we at times have provided to the Department of Justice or offered to provide them our opinion on this issue. So there have been several occasions over the past few years that we've—that we either have been solicited for opinion or we, without any solicitation, made our opinion known.

Mr. HORN. Well, when the solicitation came in this year, let's say, starting in January, when was the first time the FBI thought there was some movement somewhere related to the Puerto Rican independence people being let out one way or the other?

Mr. GALLAGHER. We were initially contacted by the Department of Justice—I assume I can provide that date——

Mr. HORN. Just a date.

Mr. GALLAGHER [continuing]. At the staff level. And we provided our opinion on June 28 of this year. Again, that was at staff level, with no executive dialog with respect to it.

Mr. HORN. Just raising the question.

Mr. GALLAGHER. Just raising the question which had been raised in prior years.

Mr. HORN. So we hadn't had much activity in the previous year?

Mr. GALLAGHER. No, sir.

Mr. HORN. In other words, these different letters, Bishop Tutu and so forth, did anybody say, well, gee, he wants us to free them? Did that ever tickle anything?

Mr. GALLAGHER. The FBI was not provided any documentation as to the rationale of the White House, nor would we expect that we would. We were simply informed that this was a matter under consideration. And usually it was the Criminal Division at the Department of Justice would solicit our input; or, again, if we heard that—either rumors or if there was any publicity given to the possibility of this, we would contact the Department of Justice and offer to express our opinion.

Mr. HORN. How about the Bureau of Prisons, Mr. Cooksey? When did you first get notice within the system from either the White House, the President's assistants, Mr. Ruff, whatever or somebody over in Justice? What date would you give?

Mr. COOKSEY. I believe that in 1993 we sent progress reports and presentence reports to the Pardon Attorney. There had been recently—you would hear something that maybe it was being considered, nothing official. It was just a couple of months ago when we received information of the possibility of a pardon.

Mr. HORN. Is the couple of months June 28, 1999, that the FBI——

Mr. COOKSEY. No, I think it was more recent than that.

Mr. HORN. More recent?

Mr. COOKSEY. Yes.

Mr. HORN. You used 1993, that the Pardon Attorney was kept informed on these Puerto Rican independents?

Mr. COOKSEY. No. In 1993, when the original petition or commutation was filed, I believe at that time we provided progress reports and presentence reports to the Pardon Attorney.

Mr. HORN. That happened in 1993. Did it happen between 1993 and 1999?

Mr. COOKSEY. Not to my knowledge.

Mr. HORN. So a little flourish at the beginning of the administration and then not much until recently?

Mr. COOKSEY. Yes.

Mr. JENNINGS. If I could just interject on that. There was an official recommendation from the Department that was made to the White House in 1996.

Mr. HORN. Was that because of the Presidential election?

Mr. JENNINGS. I would not have any knowledge of that.

Mr. HORN. What date was on that?

Mr. JENNINGS. I do not have the date in front of me.

Mr. HORN. Is that executive privilege, a date?

Mr. JENNINGS. Not to my knowledge.

Mr. HORN. There's several ways of getting out of the Federal Bureau of Prisons' system. One is to drop dead or be killed. No. 2, you finish your sentence. No. 3, you could get a furlough in some ways on good permit if you're in a light sentence, but I doubt these people. And then you've got a pardon, and you've got a clemency, and you've got parole from the adult parole.

Now, how close is pardon and clemency? Do you consider it over there the same thing or does—I'm trying to get at what flows up to the President. If he asks the question, I want to pardon this person versus I want to grant clemency versus the board of—I've forgotten the name of it now. It was almost wiped out after the Sentencing Commission, but I think it's still around.

Mr. JENNINGS. Parole Commission.

Mr. HORN. There is a Parole Commission. They do have political appointees from different administrations, including this one, I would think.

So tell me about the paper that will be generated by the FBI, the Bureau of Prisons, in terms of getting a parole, getting clemency, getting a pardon. What's the difference? Just tell me what you would go through over in Justice, what you would ask for from the FBI.

Do you get a psychological screening? Do you get a behavior report of how they were in prison? What are the things that you would do if it was the President issuing a pardon or he would never see a parole, would he, unless he knew the person?

Mr. JENNINGS. Sir, I am not an expert on the pardon process, but I can comment as to the difference between clemency and pardons and commutations if you'd like.

Mr. HORN. Fine. Let's hear it.

Mr. JENNINGS. Clemency is an umbrella term that refers to pardons. Commutations are remissions of fines. A pardon is an act of forgiveness of the offense, usually depending on State law. A commutation of sentence simply cuts short the sentence, and there is no forgiveness implied. And the remission of fines removes the requirement to pay any unpaid portion of the fine. It does not give any portion of the fine that has already been paid.

Mr. HORN. How about on clemency? He did three before. What was the process for three before this?

Mr. JENNINGS. Sir, I'm not knowledgeable.

Mr. HORN. Can we get it for the record?

What are the processes you went through on both the pardon side, the clemency side, of which he only had three is what we're reading, up to the current time when this onslaught comes and what else does the Bureau of Prisons and the FBI report to them?

Obviously, what I'm after is what didn't you give the White House or Mr. Ruff or the President of the United States before that decision was finally made? And how different is it and what's your feeling on it? It seems to me that when you get into a pardon

you're into a major undertaking and people in all administrations have been pretty careful. Clemency seems to be less careful.

I just want to have it in the record at this point, Mr. Chairman.

Mr. BURTON. They can answer that question. Then we will yield to Mr. Waxman.

Mr. HORN. That's fine.

Mr. BURTON. You may answer the question. Then we will yield to Mr. Waxman.

Mr. COOKSEY. I cannot cover the information we provided to the Pardon Attorney. To the best of my knowledge, it was the presentence reports and the progress reports in 1993. The Pardon Attorney does have access to our inmate information system which gives him access to information on discipline, program participation, these types of things.

Mr. HORN. In other words, have they been a good boy in prison? Is that what it gets down to if you're going to pardon somebody?

Mr. COOKSEY. That's the type of information he has access to. To my knowledge, that's the only information we provided him.

Mr. HORN. The Pardon Attorney is a civil servant or a political appointee?

Mr. JENNINGS. It's an SES career position.

Mr. HORN. That's a civil servant, right?

Mr. JENNINGS. Yes.

Mr. HORN. So he would stay there between administrations.

Mr. JENNINGS. Yes.

Mr. HORN. Is that true in this case?

Mr. JENNINGS. Mr. Adams was appointed by the Deputy Attorney General during this administration.

Mr. HORN. Who was that, Mr. Hubble?

Mr. JENNINGS. It was Mr. Holder.

Mr. HORN. Mr. Holder who is still there?

Mr. JENNINGS. Yes, sir.

Mr. BURTON. Mr. Waxman.

Mr. WAXMAN. First of all, I want to say that I may have misinterpreted the comments by Congressman Towns. Mr. Fossella and I both understood him to be critical of the restrictions being placed on these individuals after their parole, and I responded negatively to that idea, but I have been informed that Mr. Fossella and I both must have misunderstood because he did not criticize the conditions that were placed on those who were in fact paroled. For that reason, I do want to make a public apology to Mr. Towns.

Let me start off with some questions of you and your individual capacities. Mr. Jennings and maybe others of you know the answers. If you do, please respond.

About these 16 individuals, each of these individuals was convicted of several crimes; is that correct, Mr. Jennings?

Mr. JENNINGS. Actually, I would defer to the Bureau.

Mr. COOKSEY. That's correct.

Mr. WAXMAN. And they received a prison sentence for each of these crimes; isn't that correct?

Mr. COOKSEY. I don't have that information. What I have is their total term in effect.

Mr. WAXMAN. Mr. Gallagher, do you know whether they received separate sentences for each of their crimes?

Mr. GALLAGHER. I'd have to go back on the record. I know the total sentence for each person, and I assume it's a combination of cumulative charges.

Mr. WAXMAN. My understanding is that the sentences were imposed consecutively, meaning that the prisoners were required to serve out the sum of all of their prison sentences. Do any of you have any knowledge of that?

Mr. COOKSEY. Normally, when a sentence is run consecutive, you assert the—and this gets very technical. They're aggregated to where you have—like if you have—under the old system if you had a 15-year sentence, you were eligible for parole. You just get one-third or 5 years. If you got two 15-year sentences consecutive, for a term of 30 years, you would be eligible for parole after 10 years. So that—

Mr. WAXMAN. My question is, if you have separate sentences for separate crimes and you are told you are going to serve them consecutively, that means you add them on.

Mr. COOKSEY. That's correct.

Mr. WAXMAN. You may have different rules as to when you can apply for parole, but they're run in sequence.

Mr. COOKSEY. One behind the other.

Mr. WAXMAN. Now, today convicts are sentenced under the Federal Sentencing Guidelines, are they not?

Mr. COOKSEY. That's correct.

Mr. WAXMAN. Under those guidelines, how are multiple prison sentences treated?

Mr. COOKSEY. I'm not an expert on sentence computation. I can get that information for you.

Mr. WAXMAN. That would be helpful. We'll hopefully have the record open.

But my understanding is that the guidelines state that prison sentences should be served concurrently, meaning that all the sentences are served at the same time. So it's fair to say that under the current sentencing guidelines, these 16 individuals would have received shorter prison sentences than the ones they actually received. Do you have any information about that?

Mr. COOKSEY. I'm not sure.

Mr. WAXMAN. If they were serving a number of sentences concurrently, would their sentences have been much shorter?

Mr. COOKSEY. The longest sentence would have controlled. If they had two 10 years and a 20 year, their total term, in effect, would be 20 years.

Mr. WAXMAN. I would like to ask you about a case that was recently mentioned in the Washington Post. According to the Post this past summer, a Puerto Rican nationalist was convicted of planting a bomb in a military recruiting center. He was sentenced to a little more than 4 years in prison. Are you familiar with that case?

Mr. COOKSEY. I'm not.

Mr. WAXMAN. Maybe somebody can get this for the record because I'd like to know why this individual sentence was so short relative to the individuals who'd been granted clemency.

Now, the President sent to us his letter explaining what he did with these individuals. He said he treated each one of these indi-

viduals separately and looked at their sentences. And he, for example, said that, for nine of them, they had been convicted of seditious conspiracy and that amounted to 20 years; armed robbery, firearms offense was another 10 years; vehicle charges, 5 years. So for these nine, when they had their sentences all added up, they were sentenced to 55 to 90 years, and these individuals had served 19 years.

So the President decided that had they been under the sentencing guidelines of today and served concurrently, they would have been eligible for parole. He commuted for eight of them their time to 23 and 26 years, 23 to 26 years rather than 55 to 90 years.

But then he said there was this one fellow, Carlos Alberto Torres, and he was not going to give him the same treatment as he did the others, and he handled that one differently. I'm trying to find the reference to it. I think this was the fellow who had been indicted by a Federal grand jury in 1977 on explosive charges, was identified as a leader of the group and had made statements that he was involved in a revolution against the United States and that his actions had been legitimate. For this man, the President did not go along with the same type of clemency as he had done for the others.

None of you were involved in considerations of these individuals as to the amount of time they were serving consecutively or concurrently. It sounds like none of the three of you even knew whether in fact they were serving consecutive or concurrent terms; is that correct?

Mr. GALLAGHER. I knew they were serving consecutive terms, and I knew the length of terms, but I believe your question was, were they charged specifically for certain events and was it a cumulative one? And that's the answer I did not have, what the specific charge was and time served, sentence for each charge.

Mr. WAXMAN. The President set forth three other petitioners. By the way, his letter says they are all petitioners. Someone raised the issue earlier whether they had requested anything. Three of them were convicted of seditious conspiracy and illegal transportation of stolen vehicles and weapons offenses. They had 35 years. They had served 16 years. The President commuted the sentence to 26 years. Now, I gather if you have a 26-year sentence after serving for 16 years, Mr. Cooksey, you can be considered for parole?

Mr. COOKSEY. Under the old guidelines, if you had a 26-year sentence, depending on the sentence structure, you could be considered after one-third. Under the new guidelines, there is no parole.

Mr. WAXMAN. One of the petitioners, Oscar López Rivera, was charged with the other nine petitioners, but he was not arrested until later, in May 1981; and he was convicted of the same offenses and received sentences totaling 55 years; and in 1984 he tried to escape. This was the gentleman Mr. Burton asked you extensively about. He tried to escape and, Mr. Cooksey, you said you would consider him not someone worth taking a risk on. Is that a fair statement of your position?

Mr. COOKSEY. We have him in a penitentiary. That explains it all in a nutshell. That's high security.

Mr. WAXMAN. Well, the President didn't disagree with you. And because he had been sentenced to an additional 15 years for trying to break out of prison, the President said he proposed commuting

his original conviction to 29 years but did not commute his sentence for the attempted escape which was 15 years. So this man was not going to be permitted for parole, and he did not agree to the restrictions that would have been placed on him, so he still has 29 years to serve, as best I can calculate it.

Then there are four petitioners who are members of the Los Macheteros, and they were considered separately.

Antonio Camacho-Negrón was released in 1998, and he was later rearrested for parole violation, and the President said I refuse to commute his sentence although I did offer to remit his outstanding fines. And Juan Enrique Segarra-Palmer had his sentence commuted so that he would be eligible for parole after serving 19 years in prison.

Now, when someone's given a commutation or clemency, no one is saying they're not criminals. No one can assume they weren't criminals. If they were terrorists, this doesn't mean they weren't terrorists; is that a fair statement?

Mr. GALLAGHER. I think Mr. Jennings has testified to that issue.

Mr. WAXMAN. A pardon would have been different. A pardon might have wiped out their previous crime. The President wasn't wiping out their crime. He was being more lenient in giving clemency for the sentences that were imposed; is that right, Mr. Jennings?

Mr. JENNINGS. A pardon is defined as an act of forgiveness for the offense.

Mr. WAXMAN. Mr. Gallagher, to the best of your knowledge, do you know of any instances of which the FBI did not oppose a request for clemency?

Mr. GALLAGHER. Did not oppose?

Mr. WAXMAN. Yes.

Mr. GALLAGHER. I can't recall. First of all, many requests that we received for clemency, and I can go back and check what our position on each one was, but I'm not aware of any that we would have—that we supported.

Mr. WAXMAN. Earlier today my staff asked the FBI whether there had been instances where the FBI actually supported clemency, and we were told that we couldn't get a conclusive answer today because this would take some time to thoroughly research the question. We were told, however, that they could not recall any instances in which the FBI supported clemency. Would you be willing to look into this question and give us an answer?

Mr. GALLAGHER. Certainly, sir.

Mr. WAXMAN. To your knowledge, you don't recall any instances where the FBI ever supported clemency?

Mr. GALLAGHER. Again, we—the issue of clemency is not a routine issue that we're either constantly or consistently asked about, but I will be able to research each time where the Department of Justice has asked us for input and provide them.

Mr. WAXMAN. Article 2, Section 2 of the Constitution states that the President shall have power to grant reprieves and pardons for offenses against the United States. In reaching his decision, the President can ask for the advice of law enforcement officials such as the Justice Department, the FBI, and the Bureau of Prisons. He can also listen to the advice of others, including former President

Carter, Bishop Tutu or his counsel. So it seems to me very possible that the President may have given due consideration to your recommendations but still decided to grant clemency based on the advice of others. Would you all agree to that?

Mr. GALLAGHER. I can't comment on what, if anything, was passed on to the White House—

Mr. WAXMAN. That wasn't my question. My question to you is, since the President has the prerogative in making this decision and he asks for input from all sorts of groups that would have appropriate things to say, including the FBI, the Bureau of Prisons, the Justice Department and others, once he gets that input, if he decided differently, if he decided clemency based on others' advice, he has the prerogative to do that, doesn't he, whether you agree with him or not?

Mr. GALLAGHER. I can't comment on that, sir.

Mr. WAXMAN. Why can't you comment on it?

Mr. GALLAGHER. You asked me whether or not the President has the prerogative to consider. We're assuming that he has been provided all the necessary information. I don't know that to be a fact. So I can't presume that he, in fact, has the FBI information, to what degree he considers—

Mr. WAXMAN. Let's presume for the purposes of my question he had your input. The FBI said to him, we don't agree with clemency. We don't agree with clemency for these individuals. We don't think there ought to be clemency. And the President had that advice and he had other people saying to him, we think that it's unfair for them to serve consecutively all these sentences. We wouldn't have that under the official guidelines now. He's hearing from others that say that he ought to exercise clemency for humanitarian reasons. Whatever arguments are being made, when the decision is to be made, it is the President's decision. Do you disagree with that?

Mr. GALLAGHER. No, sir.

Mr. WAXMAN. Do any of you disagree with that?

Mr. JENNINGS. No, sir.

Mr. COOKSEY. No, sir.

Mr. WAXMAN. The President's decision, not everyone can agree with, if he particularly gets conflicting recommendations. Isn't that accurate?

Mr. GALLAGHER. Yes.

Mr. WAXMAN. I do want to point out, just because I have time and there should be no misunderstanding of it, the President didn't give unconditional clemency to these individuals. He attached restrictions.

They had to report to their probation officers. They couldn't violate any laws. They couldn't associate with individuals who engaged in criminal activity. They couldn't drink alcoholic beverages to excess. They couldn't purchase, possess, or use marijuana or other narcotics. They could be drug tested at any time. They couldn't associate with persons who have a criminal record unless they had permission from the probation officer. They could not possess a firearm or other dangerous weapon.

I believe there are restrictions as well on their travel regarding getting permission in advance to travel. And there are other provi-

sions in there—I don't know if they apply to all of them in terms of paying their child support and all of that.

Is this unusual, Mr. Cooksey or Mr. Jennings or Mr. Gallagher, to place conditions on some kind of parole?

Mr. COOKSEY. It depends on what type of release it is. If an inmate is released on parole, those are pretty much the parole guidelines that he has to abide by. If he's completed a sentence, what we call mandatory release, but he still has a period of supervision to follow, those similar restrictions apply.

Mr. WAXMAN. If you're released on parole and you violate any of the restrictions, any single one of them, what happens?

Mr. COOKSEY. The U.S. probation officer—and again I'm not an expert on this. I'm telling you my understanding—the U.S. probation officer normally prepares a letter to the U.S. Parole Commission requesting that the violator's period in the community be revoked and he be brought back to the institution. If the Parole Commission agrees, they'll bring him back for a parole violator hearing. It's a due process hearing. Then at that hearing they determine whether or not his parole should be revoked or not and what new term he'll have to serve.

Mr. WAXMAN. In this particular case, one of the conditions was if the Attorney General of the United States, this one or the next one, receives information that there's been a violation of any of the conditions, she could have them put back into prison automatically. That's unusual, isn't it?

Mr. COOKSEY. That's unusual that the Attorney General can place an inmate back into prison.

Mr. WAXMAN. It appears from what the President appears to be telling us is that he heard what the FBI had to say. He heard from people who strongly disagreed with any kind of leniency. He heard from people who strongly believe there ought to be leniency. He looked at the sentences and thought that these sentences were excessive, given the specific crimes for which there was a conviction and that the sentences were all being added up, being treated consecutively rather than concurrently. And he thought he'd take a chance on some of these people with these very carefully structured restrictions that they would have to agree to in advance and they would have to agree to renounce violence and not to associate with their fellows from the FALN, not to engage in any kind of criminal activity. That appears to be what the President has decided in this case.

I said at the beginning of this hearing I don't know if that's a decision I would have made, and I don't know if we'll ever know what all the information is that the President had. Because if there's ever a case for executive privilege, this is about the strongest case there is.

The President and the administration has sent us boxes of information, so we have a lot of information that he had available to him. What we don't have is what his lawyers said to him, what his staff people might have said to him, the kind of communication for which the executive privilege doctrine has always applied. And the reason for that—the policy reason for that—is that the President should not have to be faced with—nor should the people who advise him be faced with—their advice being given with the idea of how

it would look later on. He wanted their candid assessment, and that assessment would be kept confidential and would be considered privileged under the executive privilege doctrine.

For the life of me, I can't understand why he didn't talk with Ms. Berger or Detective Pastorella or the other victims. I simply can't understand that. But he didn't.

And I don't know why the parole board didn't meet with him. My understanding is that they should have. But the President did have advice from others and reached the conclusion he reached. And while it may not have been the conclusion that Mr. Burton may have reached or I might have reached or others might have reached, it's within his prerogative as the President to reach the conclusion he has.

So I thank you for your testimony today. For those instances where we've asked you to give us more information for the record, I'd be pleased to see it. I hope the chairman of the committee will make it part of the record and will hold the record open to receive that information.

With that, Mr. Chairman, I don't know how much time I have, but I'm going to yield it back to you to move on to the next panel or conclude with this one.

Mr. BARR [presiding]. Thank you, Mr. Waxman.

I yield to the gentleman from California for 5 minutes.

Mr. OSE. Thank you, Mr. Chairman.

Mr. WAXMAN. Point of order. We're under the 5-minute rule? OK.

Mr. OSE. The question I have, Mr. Gallagher, is I've heard a lot of references to the Los Macheteros, which the interpretation given to me is the machete wielders. Does that sound like your bobby socks baseball team kind of thing or is that something that kind of piques your interest?

Mr. GALLAGHER. Sir, not only by their name but by their—by the crimes they committed I think you can clearly associate the Los Macheteros with violence and crime.

Mr. OSE. I just want to make that clear. Because by saying Los Macheteros we all say, gee, that sounds kind of neat. But the translation is the machete wielders, just for clarification.

I've read the President's executive grant of clemency, and the question that I have is that there's nothing in here specifying to the degree that my good friend from California referenced, the terms and conditions of the clemency, such as association, not being able to unduly buy alcoholic beverages and the like. Are those applied uniformly by the Parole Commissioner? Are they subject to a little bit of waiver now and then, depending on the subject?

Mr. COOKSEY. Generally, when an inmate is released on parole, they have a uniform set of guidelines, which we've talked about here. Now, there can be some special conditions. If a releasee has a drug problem, there can be a special condition that he seek drug treatment, those type things, but they are generally the parole supervision requirements.

Mr. OSE. Do the parole supervision requirements for these individuals preclude their association with each other?

Mr. COOKSEY. On the parole supervision guidelines, you're not supposed to associate with someone else that's been involved in

criminal activity or convicted of criminal activity. Occasionally, there's an exception made. The probation officer—like if it's a father and son or some immediate family, you can make an exception where the parolees can live together, communicate, these type things. So there is occasionally an exception made.

Mr. OSE. Largely family based kind of things?

Mr. COOKSEY. I would think so, yes.

Mr. OSE. Are there any such instances amongst these 16?

Mr. COOKSEY. Not to my knowledge.

Mr. OSE. Have the probation officers with jurisdiction over these 16 cases granted any of them the permission to associate with any of the others?

Mr. COOKSEY. I don't have that information. Not to my knowledge.

Mr. OSE. Are there any circumstances under which such a request would be granted by a probation officer?

Mr. COOKSEY. I wouldn't have that—I wouldn't have that information. That would go directly to the probation service.

Mr. OSE. You're the Assistant Director for Correctional Programs?

Mr. COOKSEY. Yes, in the Bureau of Prisons.

Mr. OSE. In the Bureau of Prisons.

Let me ask the question a little differently. As a matter of practice, would any of these 16 be given permission by their probation officers to consort with the other 15?

Mr. COOKSEY. Again, I wouldn't have that information. The U.S. Probation Office is under a different part of the government than we are.

Mr. OSE. Did the Bureau of Prisons make any recommendation regarding this subject?

Mr. COOKSEY. No.

Mr. OSE. None whatsoever?

Mr. COOKSEY. None whatsoever.

Mr. OSE. Mr. Chairman, I think this would be something we could probably inquire about.

Mr. BURTON [presiding]. If the gentleman would yield.

Were you asked by the administration to make any kind of an inquiry or anything like that or recommendation?

Mr. COOKSEY. No, sir. What we do as a standard matter release, we notify the U.S. Probation Office that this person is coming out. We try to have them approve a plan.

Now the pardon is more like—they're released on mandatory release so they can go to one or two places, either the point of conviction or their legal residence. And we try to develop a plan in the area and once a probation officer accepts that plan, we release them.

Mr. BURTON. You were not asked by the administration for any recommendations or advice or anything along those lines?

Mr. COOKSEY. No.

Mr. BURTON. Thank you for yielding.

Mr. OSE. Always a pleasure, Mr. Chairman. I thank the gentleman.

I want to go back to the executive grant of clemency here, and I just read it. There's nothing in here about associating with any

of the other 15 people being released—no preclusion, no exclusion, no restriction. There's nothing written in black and white here that would restrict the ability of any of these 16 to associate with the remainder. I want to be clear about that.

And I don't have anything in my possession today from a probation officer having jurisdiction that says anything of that nature either, and that is of concern to me.

Finally, Mr. Chairman, I want to return to the President's letter of September 21. I have some confusion here.

The first page of the President's letter is four paragraphs, and it talks about the prisoners. Then in the second paragraph of the second page, it starts talking about the petitioners. And somehow or another we transmogrified ourselves from being prisoners to petitioners and yet there's nothing in this letter, and we haven't heard any evidence today to indicate that any of these 16 people ever petitioned the government for clemency.

I want to be clear and I'm still unclear as to who has petitioned the administration for clemency on behalf of these people.

Mr. BURTON. I think for the record we could ask the agencies involved right now to give us information along those lines when they go back, especially the Justice Department.

Mr. OSE. I see my time has expired.

I want to go back to this list that was provided earlier by my good friend from California, which I appreciate. We have the list of the people who support the release, some with conditions, some unconditionally, but we still don't have the information as to who petitioned, which is a wholly different subject. I think we ought to get to the bottom of that.

Mr. BURTON. I think your request of the Justice Department for that is a good one, and we will ask them to give us that.

Mr. Barr.

Mr. BARR. Thank you, Mr. Chairman.

Mr. Chairman, if I might inquire of the chairman, it's my understanding that the FBI, the Bureau of Prisons and the U.S. Attorney's Office that prosecuted these cases all oppose the grant of clemency; is that a correct understanding, Mr. Chairman?

Mr. BURTON. I think that is correct. I think both the Bureau of Prisons and the FBI today pretty much indicated that they thought these people should not be on the streets. However, the Justice Department I think was not quite that forthcoming. I think they were kind of ambivalent; is that correct?

Mr. JENNINGS. As far as recommendations are concerned for these individuals, it is covered by executive privilege as to what our recommendation would be.

Mr. BARR. Mr. Gallagher, the fact—

Mr. BURTON. Excuse me. I will give you some more time.

Did I not ask you earlier whether or not you thought these people should be on the street, Mr. Cooksey?

Mr. COOKSEY. You asked, but then you said you don't have to answer this, and I said thank you.

Mr. BURTON. All right.

Mr. WAXMAN. Mr. Chairman, if you would permit, maybe Mr. Cooksey can tell us for the record, did the Bureau of Prisons recommend against any kind of clemency for these individuals?

Mr. COOKSEY. We were not asked for a recommendation.

Mr. WAXMAN. We know the FBI is negative.

Mr. BURTON. Mr. Barr. I am sorry.

Mr. BARR. Had the Bureau of Prisons been asked, would they have recommended against a grant of clemency for these terrorists?

Mr. COOKSEY. I really can't answer that question. I would be one of several people that would make that decision. It would be the ultimate decision of our Director.

Mr. BARR. What would be your recommendation?

Mr. COOKSEY. My personal recommendation?

Mr. BARR. Yes, sir.

Mr. COOKSEY. I would have to say I'm a law enforcement officer at heart, and this would—this would concern me.

Mr. BARR. Mr. Gallagher, you are also opposed to a grant of clemency for those terrorists; is that correct?

Mr. GALLAGHER. Correct, sir.

Mr. BARR. Mr. Jennings, where is the sky going to fall? You put forward the proposition that there would be a chilling effect on important functions of government if it were to become public knowledge—if the public were made aware of recommendations to the President on a matter that I would presume even you would be at liberty to say does effect the public, would you not? The FBI and at least this gentleman from the Bureau of Prisons and a number of others have indicated and are not afraid to let the public know that, in their view as government officials, as law enforcement officials, a grant of clemency would not be appropriate.

Where is the sky going to fall? Is the FBI no longer going to carry out law enforcement functions because it is known that the FBI opposed this grant of clemency? Is the Bureau of Prisons no longer going to be able to maintain the security of our prisons simply because we now know some officials oppose the Presidential grant of clemency?

Mr. JENNINGS. Sir, I am not—certainly not an expert on either area and—

Mr. BARR. Either area being—

Mr. JENNINGS. Either one of your questions as far as it relates to the Bureau of Prisons or the FBI.

Mr. BARR. I don't know that that's responsive to anything. You have put forward the proposition in both your written and your oral testimony that there will be what you have cited as a chilling effect on the functions of the executive branch if the public—the citizens of this country were to know advice that was given to the President for or against the granting of clemency. We know that a number of executive agencies, departments and officials have opposed and do oppose that. Where is the chilling effect? What important function of government is now no longer going to be able to be carried out now that the public knows that?

Mr. JENNINGS. Sir, in my written statement, in my oral testimony, I was referring to the recommendations of the White House to the President from the Department as to the ultimate recommendation for the 16 and, therefore, to not have the President's assertion of privilege in this. Those people, by virtue of the term "chilling effect", would not feel—maybe feel as comfortable in the future in giving their candid assessment.

Mr. BARR. Who does the Attorney General work for?

Mr. JENNINGS. The President of the United States.

Mr. BARR. Not the people of this country?

Mr. JENNINGS. I think she does work for the people of this country.

Mr. BARR. I sort of think so, too. Because when a U.S. Attorney or an Attorney General goes into court, they represent the people of this country. They say, ready on behalf of the people. Given the fact that the Attorney General worked for the people of this country, the citizens of the United States of America, what would be the chilling effect on his or her capability to carry out the functions of that office on behalf of the people if the people of this country know what the recommendation of the Attorney General is?

Mr. JENNINGS. I think by virtue of having the President having the exclusive right in the pardon process in accordance with the Constitution, I think having her recommendation in a public setting would have—and it's not just her; it's the Department—would have a chilling effect on those who have worked on it at a much lower level.

Mr. BARR. I think maybe you could enlighten me. Would then the question become—would the Attorney General give different advice to the President if the Attorney General knew that the public would be aware of her recommendation? Is her recommendation based on whether or not the recommendation becomes public, or is it based on the facts and the circumstances of the case and the law?

Mr. JENNINGS. Sir, I honestly could not speak for the Attorney General on that issue. I think that she would have to answer that question on her own.

Mr. BARR. I think we would probably both presume that it would be based on the law and the facts and the history of these matters; wouldn't that be a fair presumption?

Mr. JENNINGS. Probably sir, yes.

Mr. BARR. That being the case, then, and it not being a determining factor in the recommendation of the Attorney General to the President, whether or not that view becomes public, what I ask you again, what is the chilling effect?

I'm not talking about all of the different conflicting advice and all the minutes of the meetings between the Attorney General and those under her, or between the President and the heads of the FBI and the Attorney General; I'm talking about the recommendation itself, which I think is different from all of the frank exchange of views that you talk about.

I'm not—

Mr. JENNINGS. You're talking about the ultimate recommendation?

Mr. BARR. I'm talking about the recommendation by the chief law enforcement officer from the executive branch to the President on a matter of very significant public note, public safety and national security.

Mr. JENNINGS. As far as that is concerned, I would have to say that, you know, it is the President's prerogative to assert this privilege, which has covered exactly what you're asking, as far as this—you know, the ultimate recommendation that was made in 1996.

So, therefore, as far as the chilling effect, it's essentially—it's not, I think, for me to answer that in the sense that it is covered by the President's privilege assertion.

Mr. BARR. It just seems to me it becomes rather circular that "the chilling effect is the chilling effect is the chilling effect" sort of thing.

Mr. Chairman, I appreciate your efforts in this regard and hope that we can get somewhere. Again, I can't speak for you, but I think you share my view that we are certainly not interested in hampering the legitimate internal deliberations of the executive branch, but I do think that your asserting them, Mr. Chairman, in subpoenaing these documents and pressing the administration on production of these documents a proper prerogative, and it is not at all inconsistent with the power that the President has under the Constitution to grant clemency to also require that the recommendations of a matter clearly involving the public in which the public has a clear interest in its safety should not be made public.

So I urge you, Mr. Chairman, to continue to press this case. I think it raises a very, very important question.

Mr. BURTON. Thank you, Mr. Barr. And we will be looking closely at the transcripts and tapes of the conversations these people had from the prisons, which will bear on this whole issue.

Mr. WAXMAN. Mr. Chairman, I want to be recognized for a second to say that there's no executive privilege left if we say that any advice the President received from people that work for him has to be made public information. If it's—as Mr. Barr says, for a public interest, that the public therefore ought to know what went on, well, that just is contrary to the whole notion of executive privilege.

The idea of executive privilege, which was asserted many times by President Bush and President Reagan and goes all the way back to George Washington's day, is the idea that the President should be able to get candid advice. And maybe the world wouldn't come to an end if we had Attorney General Janet Reno's recommendation to the President in this matter, but then what about the people who wrote their recommendations to her, what about others who want in all honesty to express their views and don't want it made public because they're giving their candid assessment to their boss, the President of the United States?

It would apply to Members of Congress as well. What right would people have to ask our staff what recommendations they made to us? We don't have executive privilege, but the doctrine is really the same. People won't feel free to give us their honest advice.

If there is anything that the President of the United States needs, it's the honest advice of people who work for him, their candid assessment. They shouldn't be inhibited from giving it to him. And we would also hope that the President would reach out and get all the input from people who have something relevant to say, but not all of it is treated with any kind of confidentiality.

Mr. BURTON. Since we have gone a little out of line here, Mr. Barr, do you have a final comment you want to make?

Mr. BARR. Thank you, Mr. Chairman.

Mr. Chairman, I think what we're talking about here is maybe, perhaps, different ways that each of us runs our staffs. When I ask

my staff for an opinion, I don't say, give me your opinion based on whether or not your opinion will be made public. I say, give me your opinion based on the facts and circumstances and your best judgment of this issue.

I would certainly hope that the President of the United States gets from Cabinet officials and from people as distinguished and important as the head of the FBI and Bureau of Prisons would be similarly based.

Some Members of Congress may look to their staffs for entirely different views on entirely different bases. But again, Mr. Chairman, what I am urging our work be about is not to require that all of the details about every different option that is being considered and the reasons for it to be made public, but the recommendation on this sort of issue by top officials of the government, tasked with responsibility not as staff people, but as representatives of the people to carry out important executive branch functions such as law enforcement, that it is in the public interest and not inconsistent in any way, shape or form with Presidential prerogatives that those final recommendations be made known to the Congress and to the public.

Mr. BURTON. Well, we will try to find some other way to skin the cat if we cannot get the President to accept what I consider to be his moral responsibility to tell the American people why he did this.

Let me yield real quickly to my counsel then—I yield real quickly to Mr. Ose for his last comments.

Mr. Ose, go ahead.

Mr. OSE. Is this round a question or a minute? Five, OK.

First of all, I want to express my appreciation—and I am saying this frequently—to my good friend from California and the staff on the other side for providing these samples of the conditions of release and the petitioner's request. I'm told we have one from each of the various criminals who were given clemency, and I'll ask the staff on the other side whether they have any objection to making it a part of the public record. I understand you're going to make all those documents part of the public record. With the consent of the ranking member, I would like to offer that now.

Mr. BURTON. So ordered.

Mr. OSE. I want to go back to my fourth question, if I can find my notes here, particularly of Mr. Gallagher.

Mr. Berger was quoted over the weekend, something to the effect that the release of these individuals was not something that should have been brought to his attention. I'm curious from a national security point whether or not people who consider themselves political prisoners and who have engaged in this kind of behavior or their impending clemency release, pardon, excusal—whatever you want to call it—whether or not that has consequences worldwide that should be brought to the National Security Adviser's attention.

Mr. Gallagher, you're the Assistant Director for National Security at the FBI. I just happen to think that this is the kind of thing that should be brought to the attention of the National Security Adviser. I'm wondering if you agree.

Mr. GALLAGHER. Perhaps if I could answer it this way: Just about every day the FBI goes somewhere in the world in pursuit

of our counterterrorism mission. When we deal with other law enforcement agencies or intelligence agencies around the world, we are suggesting a very aggressive counterterrorism program that doesn't just go for the person who places a bomb; it also goes to try to convince them to take on the infrastructure that was—that will support a terrorist organization. To the degree that this would ever send a message that persons who are not the actual placers of a bomb, or the person who pulls a trigger on a weapon, are not as serious a threat as those that would support the terrorist organization, I would agree that is a significant national security issue.

Mr. OSE. So, let me put this in layman's terms, if I might: FBI works for the Department of Justice; they're in charge of a program the point of which is to eliminate terrorist acts against the United States, whether it be domestically or overseas, coming to this country.

Mr. GALLAGHER. Or in some instances, as occurred in East Africa when U.S. citizens become victims of international terrorist acts, anywhere around the world.

Mr. OSE. Does the National Security Adviser have input into that program?

Mr. GALLAGHER. The National Security Adviser, when there's a significant international terrorism incident, is quite often advised of the FBI's efforts to attempt to resolve that incident.

Mr. OSE. So they would kind of be in on the ground floor, if you will, of the actions we take to protect our citizenry.

My question is more directly related to the top floor, if you will, or the last floor in such an instance where you actually apprehend somebody, you take them through the process; in this instance, we've convicted them, held them accountable, and now we're releasing them.

Would the National Security Adviser be interested in that?

Mr. GALLAGHER. I heard the same or listened to the same interview that you're relating to and heard Mr. Berger's explanation that his responsibility is limited to issues—international issues and not domestic issues. And he appeared to indicate that someone else would have a different responsibility for the domestic issues in the White House.

I couldn't comment on what he perceives to be his role or lack of role in this instance.

Mr. OSE. Let me move on to my other question.

The President's offer of clemency—and, Mr. Chairman, maybe we could followup on that, on this particular question—the President's offer of clemency is dated August 11th of this year. That's what this says right here. The sample petition that I have been provided from Alberto Rodríguez, requesting clemency and outlining the agreement on terms for any commutation, is dated September 7th.

Perhaps, Mr. Jennings, this is more for you—is this the ordinary process, that the executive grant of clemency comes before the petition?

Mr. JENNINGS. Sir, I wouldn't have any knowledge of that. It's not in my area of expertise.

Mr. OSE. Who would?

Mr. GALLAGHER. Not I.

Mr. COOKSEY. I don't have any specific knowledge of how the pardon process works.

Mr. JENNINGS. I think it would be the pardon attorney at the Department of Justice.

Mr. OSE. Thank you, Mr. Chairman.

Mr. BURTON. A grant of clemency is offered before the request is made? I do not understand that.

I yield my time to Mr. Wilson.

Mr. WILSON. Mr. Cooksey, a couple of questions to followup on something that you said. You mentioned earlier that the Bureau of Prisons is currently reviewing tapes of phone calls made from Bureau of Prisons facilities; is that correct?

Mr. COOKSEY. That's correct.

Mr. WILSON. Have you at this point received any indication that any of those offered clemency were talking about furthering the goals of the FALN organization?

Mr. COOKSEY. We have two tapes of where they had talked some time in the past about furthering the goals of the FALN—or "the struggle." I can't say if it's FALN. I think they used the term "the struggle."

Mr. WILSON. Now, was this information provided to the Department of Justice or the White House prior to the grant of clemency?

Mr. COOKSEY. No, sir, provided afterwards. I think we sent it over sometime around September 7th to the Department of Justice. We started reading newspaper articles about what was being said on our tapes, which was news to us; so we went back and started reviewing the tapes.

Mr. WILSON. Mr. Jennings, would it have been material to the Department of Justice's input on the clemency matter if inmates in one of the facilities were making statements about furthering any of the activities of the FALN organization?

Mr. JENNINGS. I certainly think that this would be relevant information, yes.

Mr. WILSON. Would you have provided that to the White House if you had been asked?

Mr. JENNINGS. I actually have no basis for knowledge of that.

Mr. WILSON. Not to dance around it too much, but if the White House had asked the Department of Justice for information that was pertinent to the clemency decision, is there any basis for the White House to withhold that information—for the Department of Justice to withhold that from the White House?

Mr. JENNINGS. I don't think so, sir.

Mr. WILSON. Are you aware of whether there were any requests for information that would have been obtained from phone calls?

Mr. JENNINGS. I am not aware of any of that.

Mr. WILSON. And just to followup for the record, if you could perhaps provide that to the committee for the record after the hearing, that would be much appreciated.

[The information referred to follows:]

We are unable to respond to your questions about possible White House requests to the Department for information relating to the clemency review process because those communications are also covered by the President's assertion of executive privilege.

Mr. WILSON. Just following up on one matter that was also touched upon earlier, there were quotations from a draft letter to Chairman Hyde from Director Freeh. They were read into the record at the beginning of the hearing.

Mr. JENNINGS, do you have any knowledge of whether this information was provided to Congress?

Mr. JENNINGS. Oh, I have no information to that effect. You're talking about Mr. Hyde's letter?

Mr. WILSON. No, it's apparently a draft letter from Director Freeh to Congressman Hyde that was not signed and apparently not sent.

Mr. JENNINGS. The letter that was referenced earlier, I have no knowledge of how that was sent to Congress.

Mr. WILSON. Did your office ever receive a copy of that letter?

Mr. JENNINGS. Not to my knowledge.

Mr. WILSON. Do you know of any other offices at main Justice that received a copy of that letter?

Mr. JENNINGS. Not to my knowledge.

Mr. WILSON. Again I'll ask, if you could just followup for the record, please, to provide some indication of whether that letter was in the possession of anybody at main Justice, I would greatly appreciate it.

[The information referred to follows:]

The draft letter from FBI Director Freeh to House Judiciary Chairman Hyde was in the possession of the Department of Justice and it was inadvertently provided to your Committee on September 17, 1999; see Bates numbers 001949-001952.

[NOTE.—The documents referred to are retained in committee files.]

Mr. WILSON. One other matter, Mr. Gallagher: Are there any ongoing efforts by the FBI to solve crimes attributed to the FALN?

Mr. GALLAGHER. Certainly Fraunces Tavern remains an open investigation. There are other individuals associated with the \$7.1 million armored car robbery that remain fugitives today, the more recent bombings that occurred in Puerto Rico last year, all remain investigations that are ongoing criminal investigations.

Mr. WILSON. Do you know of any efforts to obtain information from the people who were given the grants of clemency prior to their release? And I'm specifically asking here whether condition of the release was such that they would provide information about some of these unsolved crimes.

Mr. GALLAGHER. At the time of their arrest, the FBI attempted to interview and solicit cooperation from those who were arrested. In fact, one of the FALN subjects eventually did cooperate and testified in the trial in Chicago. All of the remaining subjects have not cooperated with the FBI and we were not asked—again, we were not part of the ultimate decision process nor were we aware that that there was an ultimate decision process. So we didn't have an opportunity to ask as a condition that they cooperate.

Mr. WILSON. Would you have welcomed an opportunity to ask the people given clemency whether they had any information that would have been helpful in solving some of the crimes that you've not convicted anybody for?

Mr. GALLAGHER. Having listened to the victims and the families of victims of the first panel, the FBI will remain committed for

however long it takes to attempt to solve that heinous crime in the bombings in New York.

Mr. WILSON. Now, just going back to the Fraunces Tavern bombing, I think earlier in the proceedings a statement from Mr. Jiminez was read and he stated on Meet the Press a couple of weeks ago, "I think all precautions were taken, you know, to make sure that human life was preserved, and in the end the measures were not taken that were necessary, by the people who owned these establishments."

Now, obviously he's blaming the owners of the restaurant for something here. But if you could provide a little bit of detail about that particular bombing, where the bomb was placed and when the bomb was placed, so that we can determine for ourselves whether there should be any blame attached to anybody other than the terrorists.

Mr. GALLAGHER. With your permission, I'll provide a—to a great extent, grand jury information, I'll provide as much information as I can for the record.

Mr. WILSON. OK. But are you aware of where the bombs were placed in the restaurant?

Mr. GALLAGHER. I would have to go back and check the actual report. You take not only the Fraunces Tavern, you take the two bombs in Chicago, all of those bombs had electronic timers on them. So whatever precautions they take at the time of placing the bomb, their precautions are for themselves when they walk away and they leave a sufficient amount of time for them to escape.

If someone is walking down the street, or if it's inside a department store, a facility, and a night watchman or a cleaning person happens to walk into that area, do we put the blame on the person who walks into the area innocently?

In one of the bombs in Chicago, it was in a camera bag. And someone saw the camera bag out in front of the bank and picked it up, looked inside of it and happened to see that what they thought might be a camera turned out to be numerous sticks of dynamite and tossed it aside only to have it go off sometime later.

Mr. WAXMAN. Mr. Chairman.

Mr. BURTON. Mr. Waxman.

Mr. WAXMAN. Just for clarification of the record, the document that I referred to earlier, which was a draft letter from Mr. Freeh to Mr. Hyde, that letter was part of the submissions by the Department of Justice to our committee. It was submitted to the majority as well as the minority. We received it at the very same time as did the majority receive it.

And Mr. Jennings may not be aware of that specific part of the boxes that you delivered to the committee, but that's how we received it.

Mr. JENNINGS. Actually, I was just advised that we did see a draft of the FBI letter and we did provide that.

Mr. Chairman, if I may, I wanted to just respond to Mr. Ose's comment earlier about—if it's OK.

Mr. BURTON. Sure.

Mr. JENNINGS. The document in question that you had, I was advised that we haven't obviously seen it, but the document reflects

the person accepting the terms of clemency, maybe? Is that the September—

Mr. OSE. Let me read it to you. It says, "I, Alberto Rodríguez, hereby request that the President of the United States commute any sentence of imprisonment that I am now serving as a result of conviction for one or more offenses in the United States District Court for the Northern District of Illinois, Chicago."

And then it goes on, "I understand," September 7, 1999, Alberto Rodríguez. Then there's a notarization also with a staff witness, Thomas LeMieux.

Mr. JENNINGS. We believe it's the acceptance of the conditions, but we will make sure that we get a—

Mr. OSE. It actually says, "I hereby request," and "I understand if," "I understand that," so I don't think it's an acceptance, just reading it as a layman. Maybe the attorneys have a different perspective.

Mr. BURTON. Assuming it is an acceptance, we would like to know if there was a petition filed by any of these individuals prior to the offer of clemency. If you could give us that information for the record, we would appreciate that.

[The information referred to follows:]

The petition for clemency was received by the Office of the Pardon Attorney on November 17, 1993, which was before the offer of clemency in August 1999. The documents constituting the petition were provided to your Committee on September 17, 1999; see Bates numbers 000259-000421.

[NOTE.—The documents referred to are retained in committee files.]

Mr. BURTON. And also it is my understanding once again, Mr. Cooksey—just make sure I have got this clear that there was no request by the President or the administration about information that might be on the prison tapes.

Mr. COOKSEY. No, sir.

Mr. BURTON. Thank you. I want to thank you very much for your patience. Thank you very much.

Give the head of the Bureau of Prisons and Mr. Freeh my regards. And tell Ms. Reno we said hi, too.

We will have the next panel come up now. While we are waiting on the next panel, let me just have two unanimous consent requests.

I ask unanimous consent to release all documents subpoenaed from the White House and Justice Department relating to this matter, provided that the documents are reviewed by a majority and minority staff and redacted appropriately prior to release.

Without objection, so ordered.

I ask unanimous consent to include in the record a letter from the Fraternal Order of Police and a resolution of the Puerto Rican

House of Representatives and a number of petitions against clemency presented by Detectives Senft.

And without objection, so ordered.

[NOTE.—A number of petitions against clemency are retained in committee files.]

[The information referred to follows:]



GILBERT G. GALLEGOS
NATIONAL PRESIDENT

**GRAND LODGE
FRATERNAL ORDER OF POLICE®**

5900 JEFFERSON NE, SUITE F, ALBUQUERQUE, NEW MEXICO 87109
PHONE 505-344-3159 • FAX 505-342-1004

September 3, 1999

The Honorable Dan Burton
Chairman, House Committee on Government Reform
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

I am writing on behalf of the more than 283,000 members of the Fraternal Order of Police to thank you and to express our desire to be part of any hearings which you may convene to review the decision of the President to offer clemency to sixteen convicted terrorists. As the nation's oldest and largest organization of law enforcement professionals, we are outraged by the President's decision.

On August 18, I sent a letter to the President expressing our incredulity that he would even consider releasing terrorists who are committed to achieving their separatist goals through violence. More recent reports from the *New York Times* and other media sources indicate that this decision was made over the objections of federal law enforcement, including the Federal Bureau of Investigation and the Bureau of Prisons.

We strongly support your effort to bring the truth of this matter to the fore through your oversight hearings. We would like to participate and testify at such a hearing in order to make known the views of the FOP and the nation's law enforcement community. It is increasingly clear that the public safety ramifications of releasing known violent terrorists have been set aside by President Clinton to further political goals.

I want to thank you for your efforts on this matter and I look forward to participating in your hearing. If I can of any further assistance, please contact me or Executive Director Jim Pasco through my Washington office, 202-547-8189.

Sincerely,


Gilbert G. Gallegos
National President



GILBERT G. GALLEGO
NATIONAL PRESIDENT

**GRAND LODGE
FRATERNAL ORDER OF POLICE®**

5900 JEFFERSON NE, SUITE F, ALBUQUERQUE, NEW MEXICO 87109
PHONE 505-344-3159 • FAX 505-342-1004

August 18, 1999

The Honorable William Jefferson Clinton
President of the United States
The White House
1600 Pennsylvania Avenue, NW
Washington, D.C. 20500

Dear Mr. President:

I am writing this letter on behalf of the more than 283,000 members of the Fraternal Order of Police to express our vehement opposition to your offer of clemency to sixteen convicted felons involved with a wave of terrorist bomb attacks on U.S. soil from 1974-83. I would also like to express my own personal confusion and anger at your decision.

Your offer of clemency would immediately release eleven convicted felons who conspired as members of the FALN to plant and explode bombs at U.S. political and military targets. The remaining five would have their criminal fines waived and only two would serve any additional time. These attacks killed six people, wounded dozens and maimed three New York City police officers: Detective Anthony S. Senft lost an eye and a finger, Detective Richard Pastorella was blinded and Officer Rocco Pascarella lost his leg.

Your claim that none of these people were involved in any deaths is patently false. As members of the terrorist organization that was planting these bombs, all of them are accessories to the killings as a result of the bomb attacks. Two of the persons to whom you have offered clemency were convicted of a \$7.5 million armored truck robbery, which undoubtedly financed the FALN's 130 bomb attacks.

These are not Puerto Rican patriots, these are convicted felons who are guilty of waging a war of terror against Americans on American soil to accomplish their political objectives. Why are you rewarding their efforts?

I can only assume you are again pandering for some political purpose. This time, Mr. President, it must stop before it begins.

The "human rights advocates" who are so concerned about the plight of these killers have never shed

The Honorable William Jefferson Clinton
President of the United States

Page 2

a tear for the victims. These "human rights advocates" are the same people and organizations who maintain that the United States routinely abuses the rights of its citizens and who issue reports stating that our state and local police officers are nothing more than racist thugs who enjoy brutalizing minorities. These "human rights advocates" are the same people and organizations who clamor for the release for Mumia Abu-Jamal, a convicted cop-killer, and raise money for his defense.

I do not know, Mr. President, how they decide which rights to advocate and which to ignore, but it seems that murderers and terrorists are more entitled to them than victims. Do not offer clemency to sixteen convicted felons to placate "human rights advocates."

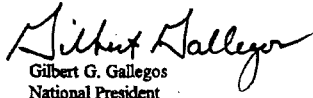
I would also strongly urge you to reject any inclination or polling data that indicates this will generate sympathy for you or for a Democratic presidential candidate among Hispanic-Americans. As an Hispanic-American myself, I can assure you that releasing violent convicted felons before they have served their full sentences and to waive tens of thousands of dollars in criminal fines, is no way to appeal to racial pride.

I sincerely hope, Mr. President, that this ill-conceived notion is consigned to the pile reserved for horrendously bad ideas. Many of the best accomplishments of your presidency stemmed from your commitment to law enforcement and to police officers.

This aberration would surely eclipse all we have done to date to keep America safe. Police officers around the country, including me, have stood side by side with you in fighting violent crime and supporting your community policing initiatives. Caving into these advocates is a slap in the face.

I look forward to hearing from you about this matter.

Sincerely,


Gilbert G. Gallegos
National President

TEXT APPROVED IN FINAL VOTE BY THE SENATE
SEPTEMBER 15, 1999

COMMONWEALTH OF PUERTO RICO

13th LEGISLATURE

6th REGULAR SESSION

HOUSE OF REPRESENTATIVES

H. CONC. R. 80

September 13, 1999

Introduced by Representatives *Misla-Aldarondo, Mundo-Ríos, Cintrón-García, Mrs. Ruiz-Class, Messrs. Acevedo-Méndez, Aponte-Hernández, Aramburu-Díaz, Báez-González, Bonilla-Feliciano, Bulerín-Ramos, Caro-Tirado, Díaz-Sánchez, Mrs. Díaz-Torres, Messrs. Díaz-Urbina, Figueroa-Figueroa, García-de Jesús, Jiménez-Cruz, Jiménez-Negrón, Mrs. Juarbe-Beniquez, Messrs. López-Santos, Maldonado-Rodríguez, Marrero-Hueca, Mrs. Martínez-Irizarry, Messrs. Nieves-Román, Núñez-González, Pérez-Ortiz, Quiles-Rodríguez, Mmes. Ramos-Rivera, Rivera-Ramírez, Romero-Donnelly, Messrs. Sánchez-Fuentes, Silva-Delgado, Valle-Martínez and Vega-Borges.*

Referred to the Internal Affairs Committee

CONCURRENT RESOLUTION

To express the repudiation on behalf of the United States citizens residing in Puerto Rico of any and all acts of violence or terrorism committed to further political or social causes.

STATEMENT OF MOTIVES

The Executive Pardon granted to a group of Puerto Rican prisoners has created a public debate in Puerto Rico and in the Nation which requires clarification.

Puerto Rico is a society composed of some four million United States citizens, who value their civil and democratic institutions and resolve their political problems through their vote. Historically, Puerto Rico has shown a total and absolute repudiation of the use of violence to further political causes, even more so if it leads to undermining the democratic will of the Puerto Rican people. The United States citizens residing in Puerto Rico strive unyieldingly to advance the democratic principles that are the foundation of any righteous society. With their peaceful example they give dignity to the ideals set forth in our Constitution and which are the pillars on which our Nation was established. Puerto Ricans understand, and rephrasing the words of Madison, that "democracy is to factions what air is to fire, an aliment without which it instantly expires." But it is our conviction, as we live and predicate, that disagreement in democracy is manifested through vote or peaceful protest, and not through violence.

Acts of terrorism such as those which have taken place throughout the rest of the Nation, do not reflect the customary conduct of a people that has historically and vehemently repudiated said acts. An example of this is the steadfast participation of Puerto Ricans in the social, economic and political development of our Nation. Many are the thousands of Puerto Ricans who have shed their blood on the battlefields, four of whom have been awarded the Congressional Medal of Honor for their heroic actions and for making the ultimate sacrifice in defense of democracy. Many are the Puerto Ricans

who have also brought glory to the world of sports for their athletic prowess while participating in sports events in the United States and throughout the world, to wit: Roberto Clemente, Juan González, Chichí Rodríguez, Roberto Alomar, Orlando Cepeda, Gigi Fernández, Tito Trinidad and others. Many are the Puerto Ricans who have excelled in the arts such as José Ferrer, Juan Hernández, Tito Puente, Rita Moreno, Raúl Juliá, José Feliciano, Ricky Martin, Jennifer López, Chayanne, among others. Many are the Puerto Ricans who have fostered industry and trade in goods and services, that through various bodies, such as the Hispanic Chambers of Commerce, promote commercial exchange and the creation of jobs in our Island as well as in the fifty states of the Union. Many are the Puerto Ricans who have held or hold prominent positions in the various fields of the political, juridical and civic arenas thus contributing to the development of our Nation, such as Judges Juan Torruella, José Cabranes and Sonia Sotomayor, the former Surgeon General, Antonia Coello de Novello and Governors Luis Muñoz Marín and Luis A. Ferré, among others; true experts of an extensive democratic tradition in America. Many are the Puerto Ricans who have brilliantly served as engineers and experts in highly technical areas while working at NASA, at the Chicago Board of Trade, and for many other important entities.

Puerto Rico has the highest index of voter participation in all the Nation, with an average reaching 85% in the general elections held every four years. In this regard, it surpasses the United States and shines as an example of respect towards the electoral process for the rest of the United States. Throughout this century we have enjoyed free and peaceful elections. Our Constitution states that a fundamental value of our public life

is our devotion to our democratic values, to the United States citizenship and to peace.

In brief, Puerto Rico has always politically stood as a symbol of peace, democracy, social order and has shown a sense of respect and collaboration with those democratic institutions that have distinguished the United States from the rest of the world. For all the above, we Puerto Ricans reaffirm our unwavering pride in being United States citizens.

BE IT RESOLVED BY THE LEGISLATURE OF PUERTO RICO:

Section 1.- To express the clearest and most vehement message of repudiation on behalf of the four million United States citizens residing in Puerto Rico of any act of violence or terrorism committed to further political or social causes.

Section 2.- It is hereby directed that this Concurrent Resolution be delivered to J. Dennis Hastert, Speaker of the House of Representatives of the United States of America, to Richard Arney, Majority Floor Leader, Richard Gephardt, Minority Floor Leader, to Strom Thurmond, President Pro-Tempore of the Senate of the United States of America, to Trent Lott, Senate Majority Floor Leader, to Thomas Daschle, Senate Minority Floor Leader, to all other members of the Congress of the United States of America, to the President of the United States of America, William Jefferson Clinton, to the Vice President, Albert Gore, Jr., and to all the communications media.

Section 3.- This Resolution shall take effect immediately after its approval.

Mr. BURTON. Would you two gentlemen stand up, please, so we can have you sworn.

[Witnesses sworn.]

Mr. BURTON. Mr. Barnes, would you like to make an opening statement first?

STATEMENTS OF HARRY BARNES, DIRECTOR, CONFLICT RESOLUTION PROGRAM AT THE CARTER CENTER; AND REV. DR. THOMAS DIPKO, EXECUTIVE VICE PRESIDENT, UNITED CHURCH BOARD FOR HOMELAND MINISTRIES, UNITED CHURCH OF CHRIST

Mr. BARNES. Thank you, Mr. Chairman.

Mr. BURTON. I apologize for the length of the hearing, but as you can see, we had a lot of ground to cover.

Mr. BARNES. Learned a lot. Thank you.

My name is Harry Barnes. For the past 5 years and some, I have been responsible for the Carter Center's program in the areas of conflict resolution and human rights. Previously I had been in the career foreign service. My last three posts abroad were as Ambassador to Romania, India and Chile. I have been involved in monitoring the case of the 16 Puerto Rican nationalists, became involved in late 1996 and have followed it ever since.

In February 1997, President Carter wrote to Attorney General Reno, urging that she recommend to President Clinton commutation of sentences for this group. President Carter pointed out the similarities between these cases and those of four Puerto Rican nationalists whose sentences he commuted in 1979. In both instances, the sentences were much longer than those applied for comparable crimes or worse.

In early 1998, I went to see Deputy Attorney General Eric Holder to get a clearer idea of the process involved in clemency cases. Then in July of that year, President Carter again wrote to the Attorney General. In that letter, he mentioned he had read some of the prisoners' recent statements and commented that there seemed to be a process of reflection going on in their thinking. In addition, he stressed the broader context, mainly the fact that 1998 was the 100th anniversary of the United States annexation of Puerto Rico. At that moment, he was hopeful that the Congress would decide to offer Puerto Ricans an opportunity to make their own decisions on their future status, but as you know, that has not yet happened.

Last month, when President Clinton was at the Carter Center to present the Medal of Freedom to President and Mrs. Carter, President Carter used the occasion to mention his long-standing interest in the Puerto Rican prisoners issue. President Clinton told him that he had already decided to offer conditional commutation and the news would appear a few days later.

From my experience over these last several years in following the commutation question, I draw several conclusions: one, that those convicted had served much longer prison terms than usual for those crimes; two, that they should not be kept in prison for crimes for which they had not been charged and convicted; three, that the power of commutation thoughtfully used is a power for adding mercy which can have a healing effect; four, that amid all the diverse views on the wisdom of President Clinton's decision to offer

commutation to these individuals, it is important to remember our fellow citizens who are Puerto Ricans and who, as much as any of us, deserve to decide for themselves their future status.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Barnes follows:]

THE
CARTER CENTER



September 15, 1999

My name is Harry Barnes. For the past five years and some I have been responsible for The Carter Center's programs in the areas of conflict resolution and human rights. Previously, I had been in the career foreign service. My last three posts abroad were as ambassador to Romania, India and Chile.

I became involved in monitoring the case of the sixteen Puerto Rican nationalists in late 1996 and have followed it since. In February 1997 President Carter wrote to Attorney General Reno urging that she recommend to President Clinton commutation of sentences for this group. He pointed out the similarities between these cases and those of four Puerto Rican nationalists whose sentences he commuted in 1979. In both instances the sentences were much longer than those applied for comparable crimes or worse.

In early 1998, I went to see Deputy Attorney General Eric Holder to get a clearer idea of the process involved in clemency cases. Then in July of that year, President Carter again wrote to the Attorney General. In that letter he mentioned that he had read some of the prisoners' recent statements and commented that there seemed to be a process of reflection going on in their thinking. In addition he stressed the broader context, namely the fact that 1998 was the 100th anniversary of the United States annexation of Puerto Rico. At that moment, he was hopeful that Congress would decide to offer Puerto Ricans an opportunity to make their own decisions on their future status. But as you know no action has yet been taken.

Last month when President Clinton was at The Carter Center to present the Medal of Freedom to President and Mrs. Carter, President Carter used the occasion to mention his long-standing interest in the Puerto Rican prisoners case. President Clinton told him that he had already decided to offer a conditional commutation and that the news would appear a few days later.

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Page two

From my experience these last several years in following the commutation question, I draw several conclusions: 1) that those convicted had served much longer prison terms than usual for their crimes; 2) that they should not be kept in prison for crimes for which they had not been charged or convicted; 3) that the power of commutation, thoughtfully used, is a power for adding mercy, which can have a healing effect; 4) that amid all the diverse views on the wisdom of President Clinton's decision to offer commutation to these individuals, it is important to remember our fellow citizens who are Puerto Ricans and who as much as any of us deserve to be able to decide for themselves their future status.

Mr. BURTON. Dr. Dipko.

Rev. DIPKO. Good evening. Thank you, Congressman Burton and others, for giving me an opportunity to share with this distinguished committee why the General Synod of the United Church of Christ supports the President's clemency for Puerto Rican men and women imprisoned for their convictions and actions for the cause of Puerto Rican independence.

Our support is neither naive about the suffering caused by the FALN, the bombings, nor callous toward those victimized by them. The members of the United Church of Christ join me in expressing sadness for what these victims have endured, even to this moment. We abhor violence and believe that compassion for the victims of violence is foundational to the justice system of any nation that calls itself a democracy.

At the same time we live with the wisdom of Jesus, who condemned the retaliatory rhetoric of an eye for an eye and a tooth for a tooth. The hope of the world for justice and peace does not lie in the reactive carnage of vengeance or in punitive sentences that place retribution above rehabilitation and reconciliation.

We agree with President Clinton, Amnesty International and numerous voices of conscience at home and abroad who note that in comparison with the 7 to 20-year sentences generally served by people actually convicted of murder in our Nation, the more than 1,000 years of incarceration imposed on these men and women, averaging over 65 years in prison for each, constitutes excessive punishment, disproportionate to the crimes of which they were in fact found guilty.

Contrary to those who contend that guilt by association justifies such harsh sentences wherever in the world terrorism is invoked, we continue to champion due process and the presumption of innocence as twin cornerstones of our American legal heritage. We are a church of the dissenting Pilgrims and Puritans who came to these shores in search of religious liberty. But we are also the church of the Amistad and its Mende people, who were lawlessly treated as slaves, when in fact they were free men and women from Sierra Leone, West Africa. Accused of mutiny and murder, their case pricked the consciences of New Englanders unpersuaded by the sophistry of the Mende's captors. Our solidarity with them brought their case to the Supreme Court of this land, and with John Quincy Adams, the former President and member of the House of Representatives, acting as our attorney on their behalf, they were declared free.

Our church, whose members founded Harvard, Yale, Dillard, Fisk, and many other institutions of higher learning, believes the promise of scripture, that the truth will set us free. We do our homework well. At our best—and we are not always at our best—we do not put a wet finger to the air to determine where the winds of public opinion point on the road through moral ambiguity to clarity of conscience before God.

These are some of the reasons why my church has urged this controversial clemency since 1991. For me more personally, my advocacy began in 1995 when I visited Dylcia Pagan, Lucy Rodriguez and Carmen Valentín at the Federal correctional institution in Dublin, CA. Whatever reservations I may have had about the

rightness of a call for their release evaporated at that meeting and in subsequent visits that included Alicia Rodríguez. I was moved by the honesty of these women about their past. Their gentle strength and their desire to resume responsible lives in society as persons who publicly committed themselves to nonviolence before the offer of clemency in 1997. I count my visits with them as one of the most transforming experiences of my life.

It seems to me, by commentary to the side, I am one of the few persons in this room who has actually met these persons. We implore you and your colleagues not to indulge in the hysteria that demonizes Carmen, Alicia, Lucy, Dylcia and their colleagues. They have served more than ordinary sentences for the crimes involved. Let us affirm their release and address the causes that drove them to behaviors which none of us can condone and which they themselves have pledged not to repeat.

Thank you.

[The prepared statement of Rev. Dipko follows:]

HOUSE GOVERNMENT AND REFORM COMMITTEE
A Plea for Reconciliation:
In Support of Clemency for the Puerto Rican Prisoners
September 21, 1999

The Reverend Thomas E. Dipko, Ph.D.
Executive Vice President
United Church Board for Homeland Ministries

Good afternoon. Thank you, Congressman Burton, for giving me an opportunity to share with this distinguished Committee why the General Synod of the United Church of Christ supports the President's clemency for Puerto Rican men and women imprisoned for their convictions and actions for the cause of Puerto Rican independence.

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Thank you.

Mr. BURTON. Dr. Dipko, you took great pains to go to prison to talk to these people who were part of this FALN organization. Did you by any chance take any time to go talk to any of the victims?

Rev. DIPKO. I do not know the victims personally except as I have met them here today.

Mr. BURTON. Thank you.

I yield the balance of my time to Mr. Barr.

Mr. BARR. Thank you, Mr. Chairman.

Dr. Dipko, your church I think refers to these people as POWs; is that correct?

Rev. DIPKO. We have referred to these persons as prisoners of conscience.

Mr. BARR. Your literature describes them as POWs. What's the difference between a POW and a POC?

Rev. DIPKO. There is a significant difference. A prisoner of conscience is a prisoner whether a citizen of this land or not. But this land is a lawful Nation and its laws must be taken seriously. These are persons who are not citizens of this land, as you well know, on the basis of our territorial agreements with Puerto Rico. It's a strange arrangement indeed.

Mr. BARR. I think you're wrong on that.

Rev. DIPKO. They are citizens of this land, but they are not entitled to the privileges of ordinary citizens.

Mr. BARR. You're wrong there too. The literature uses the term POW.

Rev. DIPKO. What literature are you referring to Mr. Barr?

Mr. BARR. This is a news brief from the Senate and it says, this is an article—"POW Alejandrina Torrez to be honored," further quote during the Senate, "POW Alejandrina Torrez will receive," and then it goes on to describe, "great accolades are bestowing on her, the church."

That's where I'm seeing the use of the term "POW," which stands for prisoner of war. Are you saying this was an error, it shouldn't have said "POW"?

Rev. DIPKO. I'm saying that "prisoners of conscience" is the standard language that we have used.

Mr. BARR. What is a POW?

Rev. DIPKO. A prisoner of war would be a person who is from another nation and is in conflict with this Nation, as I would understand that term ordinarily, and therefore should be treated under certain international conventions.

Mr. BARR. Which gets me back to my original question, why do you all consider these people prisoners of war?

Rev. DIPKO. And I'm saying to you, as I understand our use of the term, our standard use for referring to them is "prisoners of conscience."

Mr. BARR. Whoever wrote this might have been in error.

Rev. DIPKO. It could well have been.

Mr. BARR. Regardless of whether you describe this, this woman as a prisoner of war or prisoner of conscience, she apparently was singled out for recognition as an honored laywoman; is that correct?

Rev. DIPKO. That's correct.

Mr. BARR. Was it her bombmaking capabilities that make her honored? What was it that makes her honored?

Rev. DIPKO. She was honored because she had convictions about the self-determination of the peoples of Puerto Rico.

Mr. BARR. If, in fact, the activities of her and her colleagues have resulted in many more deaths, would they still be honored in your eyes?

Rev. DIPKO. No, they would not.

Mr. BARR. Where is the distinction between killing only a certain number of people and killing a sufficient number to no longer be considered honored by your church?

Rev. DIPKO. There is a presumption in your question that the church would say with you that she was guilty of killing even a single person. The church has not assented to that.

Mr. BARR. Does the church's definition of killing of a person extend only to the actual physical act between a perpetrator and a person being murdered, in other words actually pulling the trigger, stabbing the knife into the flesh and taking away a person's life? Is that only in—as far as what the church's definition of murder is?

Rev. DIPKO. The church is not a civil or criminal court. We are saying back to you, sir, this is not what she was tried for or found guilty of. Those charges are well known to you on this panel.

Mr. BARR. But you are, though, at the same time saying that the church does draw some lines.

Rev. DIPKO. It certainly does.

Mr. BARR. Apparently these people did not cross the line into being dishonored, they remained on the honored side.

Rev. DIPKO. I'm saying to you as far as this church understands it, they were never tried for or found guilty of such acts as murder.

Mr. BARR. Were you here earlier when we showed the tape of this honored—

Rev. DIPKO. Yes, I was.

Mr. BARR. That didn't impress you at all? You still believe this is an honored person?

Rev. DIPKO. That tape would have to have a lot more unpacking for me to understand where it came from and the circumstances under which it were made.

Mr. BARR. Let's look at it any way.

[The videotape was played.]

Mr. BARR. The woman at the bottom is your honoree, Alejandrina Torrez. They are manufacturing bombs designed to kill, maim, injure and destroy property.

Rev. DIPKO. If that is an accurate record of the happening and that is in fact what she was doing, the church would wish to, of course, disassociate from it.

Mr. BARR. In other words, she would no longer be considered an honored person?

Rev. DIPKO. I would think so.

Mr. BARR. Thank you.

Mr. BURTON. Mr. Waxman.

Mr. WAXMAN. Thank you, Mr. Chairman.

Mr. Barnes, as I understand it, former President Carter wrote to Attorney General Reno urging her to support clemency for these 16

individuals. And I would like to ask you a few questions about when President Carter made a decision in 1979 to pardon four Puerto Rican nationalists. What crimes were the pardoned individuals convicted of?

Mr. BARNES. Several were involved in the attempt to kill Members of this House. One, if I recall correctly, attempted to assassinate President Truman near the Blair House.

Mr. WAXMAN. Would it be fair to say that the individuals President Carter pardoned were convicted of more serious crimes than those granted clemency by President Clinton?

Mr. BARNES. Yes.

Mr. WAXMAN. And how much prison time did those individuals serve that President Carter had—

Mr. BARNES. If I recall correctly, they served some 25, 26 years.

Mr. WAXMAN. And did President Carter attach any conditions to his pardons?

Mr. BARNES. He did not.

Mr. WAXMAN. Did the individuals pardoned by President Carter return to violence after their release?

Mr. BARNES. No.

Mr. WAXMAN. It was in 1979, wasn't it?

Mr. BARNES. That's correct.

Mr. WAXMAN. Didn't people know there was an election in the next year? They could have perhaps made some hay out of that.

Mr. BARNES. Perhaps. I don't know.

Mr. WAXMAN. Well, that's somewhat of a rhetorical question. But let's not kid ourselves, if this were in any way being seized by the Republicans for partisan reasons, we wouldn't have this issue being brought before four committees of the Congress, an unprecedented action of Congress of the United States, denouncing the President's decision without getting all the information about why he made a decision and without even having the constitutional prerogative to make that decision.

In your opening statement, you said that you had reached the conclusion that these individuals had been given disproportionately long prison sentences for their crimes. Why did you reach that conclusion?

Mr. BARNES. Because based on the sentencing guideline at the time, the standard sentencing for comparable crimes would have been less than the time actually served by the time President Carter made his decision.

Mr. WAXMAN. President Carter also said in his letter to Attorney General Reno that, "A serious process of reflection has taken place. If a clear, democratic path to independence had existed at the time, it's quite likely that they would not have chosen to act as they did."

I must say that I'm offended by that statement. It may be his view, but whatever reasons these people had, they're not good enough in our society to engage in actions that are violent, whether they were the perpetrators directly or not, but ended up in the loss of human lives. I also was troubled by the idea that this would be considered a humanitarian gesture.

I don't think we have to make gestures of humanitarianism. I think what we need in this country is justice. And by justice, that means taking into consideration what happened to the victims who

suffered, but I also think, Dr. Dipko, that justice means looking at the offenses for which these people have been convicted.

Rev. DIPKO. Exactly.

Mr. WAXMAN. I'm troubled when what we hear, or at least what I sense, is that people are being condemned for association——

Rev. DIPKO. Exactly.

Mr. WAXMAN [continuing]. With an organization that has been involved in terrorist activities.

Mr. BARNES. That's President Carter's basic point.

Mr. WAXMAN. An individual was associated with the FALN and the FALN was responsible for terrorist activities. Unless that individual is responsible for it, I don't think that individual ought to be given 90 years of prison. But if the individual were responsible, then that individual had to be charged and convicted.

The individuals here that President Clinton gave clemency to—he didn't pardon them, but gave clemency to—were convicted of different specific crimes. Now, maybe they couldn't have proven anything more, but we could assume they were bad people. But that's not justice in my view. In our civil law it's not justice to put people away for life or to execute them for lesser offenses than murder. And it seems to me, in any sense of morality, it's not justice to throw the book at somebody for a crime you think they might have committed or approve of if they didn't themselves perpetrate it.

Is that what you're saying, Mr. Barnes?

Mr. BARNES. That's right.

Rev. DIPKO. I would like to ask Chairman Burton——

Mr. WAXMAN. I don't want you to ask anybody a question. I want you to answer mine, because this is my time.

Do you agree with the point I'm making?

Rev. DIPKO. I do.

Mr. WAXMAN. I was very impressed by the statement of the victims. I know both of my children have narrowly escaped an act of terrorism when they were in Israel. A classmate of my son was killed by people who thought their cause was just: self-determination for the Palestinian people. Whatever justice they might claim for that cause, it would never justify, in my view, killing my son or my son's classmate, nor would I want somebody to come years from now, later, and say that the man that shot at innocent children in Los Angeles or shot Jewish individuals and a black man in Chicago, if he had some notions of serving the greater cause of the Aryan Nation, should be considered a political prisoner because he had a political point of view.

He could feel very deeply about it. It could be ingrained in his sense of conscience. But to me, justice would require that that individual never be released from jail after he is presumably convicted for murder or killing or attempted killing of innocent individuals, whatever the actual crime may be.

Is that the point you're making or do you have any difference of opinion? Do you think that the greater cause is ever a justification for taking human lives and committing crimes?

Mr. BARNES. Mr. Waxman, are you asking me or asking——

Mr. WAXMAN. Either one of you. Because if you do, we have a disagreement.

Maybe I'm not asking either of you. I'm stating my position, and my position is, I don't care what the cause was, even if they saw a chance at the time they engaged in these activities to win their point of view, democratically, they didn't have support for it, and they acted in ways that I don't think we can ever sanction.

Thank you, Mr. Chairman.

Mr. BURTON. Mr. Ose.

Mr. OSE. Thank you, Mr. Chairman.

Is it Ambassador Barnes; is that correct?

Mr. BARNES. I was once upon a time an ambassador, and I'm not any longer.

Mr. OSE. All right. Mr. Barnes.

Puerto Rico, if I understand correctly, has had at least one referendum on the issue of independence; is that correct?

Mr. BARNES. I'm sorry, I didn't understand.

Mr. OSE. Puerto Rico has had at least one referendum on the issue of independence; is that correct?

Mr. BARNES. My understanding, there have been two, from what the Representative said earlier. There was one, I believe, most recently in 1998, which was done locally, but not with authorization from the Congress.

Mr. OSE. What were the results of those two referenda?

Mr. BARNES. Again, as I understand it, essentially fairly evenly divided from those who wanted to maintain the present situation and those who wanted statehood, and very small numbers who wanted independence.

Mr. OSE. Which side had the majority? Was it the majority to stay as is or the majority for proindependence?

Mr. BARNES. Again, my understanding is, the majority, although it's a slim majority, is for statehood.

Mr. OSE. So there exists—and if I also understand correctly, Puerto Rico has a Governor elected from the State—it has an assembly and a senate where people are elected by the citizenry to serve there and try and address the political needs of the residents of Puerto Rico.

Mr. BARNES. The point I was trying to make earlier was that people in Puerto Rico have not been given an opportunity yet by the Congress to decide what they want for their future status.

President Carter, for example, in 1978, proposed—and this has been followed up by some of his successors—proposed that the people of Puerto Rico have an opportunity to choose among several alternatives.

Mr. OSE. What was the vote this last? Logically, would you think that the residents of Puerto Rico voted in favor of statehood or in favor of continuing territorial status, as opposed to voting for independence, would you think they were satisfied with the situation?

Mr. BARNES. No, I wouldn't think that, because this was an advisory referendum. It had no status.

Mr. BURTON. Will the gentlemen yield?

Mr. OSE. Certainly.

Mr. BURTON. There have been two referenda to give Congress some guidance. Granted, they were advisory, but the fact of the matter is the overwhelming majority, 97½ percent, either wanted

commonwealth status, which is remaining the way it is, or statehood. Only 2½ percent wanted independence.

Those people are American citizens, and they want to stay that way one way or the other. As far as the final determination, any territorial possession of the United States has to go through an act of Congress before there is any change in their status. And the same was true of Hawaii and Alaska when they became States. So I think—to interrupt the gentleman—but the fact is those people do not want independence, and this is a splinter group that is doing this.

Gentlemen.

Mr. OSE. Mr. Chairman, you have a far greater ability to get to the heart of the matter; that's where I was trying to get to.

I don't understand how it is that a referendum, advisory in nature, that shows even 70 percent, let alone the 97 percent, in favor of staying as it is, or becoming a State or a Commonwealth, I don't understand why that doesn't rule the day. I don't understand the legitimacy that gets ascribed to them when they're so overwhelmingly not supported.

Mr. BARNES. The point is that the overwhelming majority want a chance to make that decision if they can be given an opportunity by the Congress, as the chairman was pointing out.

Mr. OSE. Yet these 16 individuals—granted it was roughly 20 years ago—are engaging in criminal acts that certainly in no sense of the word would be interpreted as being supportive or helpful in getting to that. I find two distinguished gentlemen here testifying before Congress that this is something that merits our attention.

Mr. BARNES. I'm sorry, Congressman, but I'm not making myself clear. I wasn't talking about the legitimacy of the actions for which they were charged and condemned; I was talking about the importance of the people of Puerto Rico being able to do more than advise.

Mr. OSE. I think this House is on record as supporting statehood.

Mr. BURTON. We passed it. It went to the Senate and did not get action. But if the Puerto Rican people voted a plebiscite, advisory or otherwise, that they want independence, commonwealth or statehood, I am sure you would see Congress start taking some steps to move in one of those directions. So far there has been no conclusive evidence.

Mr. OSE. I'm relatively new here. I have over the years watched distinguished gentlemen like my good friend Mr. Waxman and my good friend Mr. Burton deal with these questions. I cannot conceive of the circumstances where two gentlemen from opposite sides of the aisle can work together toward addressing common concerns peacefully within the confines of the existing law when we have another group that's outside the confines and we have to grant them some sort of special status for whatever reason. I don't understand it.

If two gentlemen such as these can work out their differences, I don't understand why anyone would resort to the violence that's been perpetrated by these people.

Rev. DIPKO. You do raise a question about why. Earlier today, one of your colleagues did refer to his conscience on the matter that he could make a strong case from your own bench for the independ-

ence of Puerto Rico. I am well aware of the partnership of the Chair and the minority leader at this table, and I agree with you, it's to me encouraging to see it working here today.

But what about the United Nations norms for determining plebiscites for the self-determination of peoples? Are we really abiding by the codes we ourselves would require of other nations with similar claims, when it comes to the manner in which we are allowing the people of Puerto Rico to determine their own history? I am not sure that we are, Congressman. The evidence to me is to the contrary.

And I'm no stranger to Puerto Rico. Sixty of our parishes are there, and a number of our institutions, including hospitals and theological seminaries.

I think we can do better than we're doing. I do agree with you that violence is not the way.

Mr. OSE. I would argue under our system, and I share your concern, as so eloquently put by Mr. Waxman also, that violence is not the way. We have the House on record supporting allowing Puerto Rico to move toward statehood. We need to focus on the Senate and then have the referendum. I think we would be far better off addressing the concerns of law-abiding citizens in Puerto Rico, than spending our time potentially even talking about mercy for these 16 individuals.

That's the essential problem I have as a Congressman today. I don't know why we're spending the time of the U.S. Congress or why the administration has extended to these 16 individuals the status that has been granted to them. I take considerable exception to it.

Mr. BURTON. Thank you, Mr. Ose.

I want to thank you gentlemen for being so patient and staying here with us.

Mr. Barnes, you stated that these FALN members served longer sentences than usual for their crimes. What I would like for you to do, if you can, is give us some examples of that for the record. I am not sure that we know that they served longer sentences than usual for their crimes. If you have some examples, we would like to have that.

[The information referred to follows:]

THE
CARTER CENTER

October 15, 1999

OCT 22 1999

Mr. James Wilson, Chief Counsel
The House Committee on Government Reform
2157 Rayburn Building
Washington, D.C. 20515

Dear Mr. Wilson:

I apologize for the delay in my response to Chairman Burton's September 28 request that I provide additional information to the Committee regarding the sentences received by the 16 individuals granted clemency by President Clinton. As you know, I was unavailable to respond due to the fact that I was out of the country for some time following the committee's hearing.

Chairman Burton requested that I provide additional information to support my view that the individuals in question had received disproportionately long prison sentences for their crimes. That view is based on several factors. The individuals who had their prison sentences commuted by President Clinton received sentences ranging from 35 to 90 years in prison. The crimes that they were convicted of were very serious and should not be minimized. None of the individuals were granted clemency, however, for crimes that resulted in any deaths. By way of comparison, federal statistics show that in 1980 the average sentence in federal court for murder was a little over 10 years. More recent federal statistics show that in 1997 the average maximum sentence in federal court for murder was a little over 12 years; in state courts the average maximum sentence for murder was approximately 22 years. More detailed information on federal sentencing can be obtained from the Department of Justice's Bureau of Justice Statistics.

In addition, my understanding is that the individuals granted clemency were sentenced to consecutive prison terms for each of their crimes. While I am not an expert on federal sentencing procedures, I am told that the current Federal Sentencing Guidelines generally mandate that sentences for multiple crimes be served concurrently, rather than consecutively.

Finally, my view was also influenced by two recent cases involving conduct similar to that of the individuals granted clemency. On September 10, 1999, the *Washington Post* reported that José Solís Jordan, a Puerto Rican nationalist, was sentenced in Illinois for planting two bombs at a military recruiting center. He received a sentence of a little more than four years in prison. On February 21, 1997, the Associated

Press reported that three members of the 112 Georgia Militia were sentenced to prison for stockpiling explosives for use against the federal government. The longest sentence received by any of the three was eight years.

I again apologize for the delay in responding to the Chairman's request. At the same time, I want to express my appreciation for the opportunity to testify before the Committee.

Sincerely,

A handwritten signature in cursive script, appearing to read "Harry G. Barnes Jr.", written in black ink.

Harry G. Barnes Jr.
Chair, Human Rights Committee

Cc: Mr. Michael Yang

Mr. BURTON. With that, gentlemen, thank you very much for your patience. We stand adjourned.
[Whereupon, at 6:13 p.m., the committee was adjourned.]

